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82nd Session 1995

Report VI (2)

# Extension of the Labour Inspection Convention, 1947 (No. 81), to activities in the non-commercial services sector

Sixth item on the agenda

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## CONTENTS


| | Page |
|---|---|
| INTRODUCTION | 1 |
| REPLIES RECEIVED AND COMMENTARIES | 3 |
| PROPOSED TEXT | 80 |

## INTRODUCTION

At its 258th Session (November 1993) the Governing Body decided to place on the agenda of the 82nd Session (1995) of the International Labour Conference the question of extension of the Labour Inspection Convention, 1947 (No. 81), to activities in the non-commercial services (NCS) sector.

In accordance with article 38, paragraph 1, of the Standing Orders of the Conference, which deals with the preparatory stages of the single-discussion procedure, the Office drew up a summary report[1] intended to serve as the basis for the discussion of this question. The report introducted the issue and analysed the law and practice in respect of labour inspection in the non-commercial services in various countries. The report, which contained a questionnaire, was communicated to the governments of the member States of the ILO, which were invited to send their replies so as to reach the Office by 30 September 1994.

At the time of drawing up the present report, the Office had received replies from the governments of the following 62 member States:[2] Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Ethiopia, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Mauritius, Mexico, Republic of Moldova, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Seychelles, Slovakia, Spain, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay.

The governments of 35 member States (Australia, Austria, Belarus, Belgium, Benin, Canada, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Ethiopia, Finland, Germany, Indonesia, Italy, Kuwait, Lebanon, Republic of Moldova, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay) indicated that their replies had been drawn up after consultation with organizations of employers and workers. Some of these governments incorporated in their replies the opinions expressed by these organizations on certain points, while other transmitted the observations of employers' and workers' organizations separately. In some cases, replies were received directly from employers' and workers' organizations.

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[1] *ILO: Extension of the Labour Inspection Convention, 1947 (No. 81), to activities in the non-commercial services sector*, Report VI (1), International Labour Conference, 82nd Session, 1995.

[2] Replies that arrived too late to be included in the report may be consulted by delegates at the Conference.

This report has been drawn up on the basis of the replies received, the substance of which, together with brief commentaries, is given in the following pages. It also contains the draft text of the Proposed Protocol, based on these replies, which is transmitted herewith to governments in accordance with article 38, paragraph 2, of the Standing Orders of the Conference. It will be for the Conference to take a final decision on the matter at its next session.

## REPLIES RECEIVED AND COMMENTARIES

This section gives the substance of the replies to the questionnaire contained in the first report. Each question is reproduced and followed by a list of the governments which answered, grouped according to the nature of the replies (affirmative, negative or other). Where an observation qualifies or explains the reply, its substance is given, in alphabetical order of countries, after the above-mentioned list. When a particular reply deals with several questions, or refers to an earlier question, the substance of the reply is given only under the first of these questions with a cross-reference under the other questions. The replies are followed by brief Office commentaries referring to the corresponding Article (or Articles) of the Proposed Protocol at the end of the report.

A number of governments merely stated that the first report formed a satisfactory basis for discussion, without answering to specific questions. Such replies have been treated as affirmative or negative as seemed appropriate in the context of the questions. Some governments provided information on their national law and practice. While this is most useful for the work of the Office, such information has not been reproduced unless it is necessary for understanding the reply. Affirmative or negative replies from employers' and workers' organizations and not accompanied by remarks are quoted only when they differ from the government's reply, or when the government has not replied to the question.

In reply to Question 2, some governments expressed their preference for a Convention or a Recommendation only, but nevertheless replied to subsequent questions relating to the contents of a Protocol; their observations should be understood accordingly.

### General observations

*Algeria.* The Government supports the proposal to extend Convention No. 81 to activities in the non-commercial services (NCS) sector. This would be in accordance with recent legislation establishing the principle of labour inspection responsibility in the public sector.

*Argentina.* The Government does not support the proposed new instrument. Under Argentinian legislation, the Labour Administration Authority is responsible for enforcing labour contracts, their supplementary regulations, special statutes and collective labour agreements. This assumes that the intervention of inspection bodies is limited to categories of employees bound by a contract or by labour relations. Thus, it is necessary to distinguish between the sectors described. The proposed classification of the NCS sector includes categories of public services, such as railways and other means of transport, electricity, gas and water supply services, postal services, etc., provided by private enterprises in Argentina, and which are subject to labour inspection. National (federal) government, provincial or local administrative services, the armed services and security services, come within the scope of public employment, where relations are governed by administrative law outside the scope of labour contracts. Consequently, inspection does not apply to such services, and it would not be

possible to include them within its scope, mainly because Argentinian law treats the workers i these bodies as civil servants, who as such are not covered by labour contract law.

*Austria*. The Transport Labour Inspectorate in Austria coveres posts and tele communications, as well as railways and other public transport services and operates fully i accordance with ILO instruments. Austrian experience over many years has shown that such a inspection service can operate effectively in this sector. The circumstances, difficulties resources and means of intervention mentioned in Chapter I of the ILO report, in particular with regard to hazards to which workers are exposed, correspond entirely to Austrian experience Effective methods for improving and developing labour protection have been implemented Even with regard to federal establishments, where no direct possibility of sanctions under the procedure of administrative fines exists, the responsible inspection authorities have various means of enforcement at their disposal, including the imposition of sanctions through disciplinary action.

Austrian Chamber of Labour (BAK): The objectives of the proposed instrument(s) are supported unconditionally. Workers in the NCS sector should not enjoy lesser protection than those in industry and commerce. In the public sector, there is little or no supervision, nor do effective measures exist to enforce labour protection, and regulations are lacking.

*Bangladesh*. The Government reports that postal services and telecommunications, railways and other public road, air and water transport services, public utilities and other essential services are covered by national laws relating to labour inspection. In view of the state of economic development and other social conditions, the Government is not in a position to consider the proposed extension of Convention No. 81 to the NCS sector.

*Belgium*. National Labour Council (CNT): Representatives of employers' and workers' organizations together recalled that in 1993 the Employers' and Workers' groups of the ILO Governing Body included Convention No. 81 among the ten priority Conventions of the Organization. The CNT therefore approves the extension of Convention No. 81 to the NCS sector, as this initiative reflects a will to attach greater value to that instrument. Furthermore, such an extension should raise few difficulties in Belgium since the NCS sector, as defined in Report VI (1), is already largely covered.

*Cuba*. The Government states that, theoretically, all places of work are subject to labour inspection, but in practice the armed forces, the police and other national security bodies have their own inspection system. All other state activities, including education, health, central administrative bodies, etc., are subject to labour inspection. Cuba is therefore in favour of the proposed extension of Convention No. 81.

*Cyprus*. Cyprus Workers' Confederation (SEK): The Confederation favours the extension of the above-mentioned Convention to activities in the NCS sector but reserves its views on the various issues raised in the questionnaire for the Conference.

*Denmark*. Under existing Danish legislation any work performed for an employer is covered by the Working Environment Act. Exceptions relate to: (1) work in the private household of the employer; (2) work performed by members of the employer's family; (3) and work performed by the armed services, i.e. ordinary military service. A considerable number of the substantive rules laid down in the Working Environment Act apply irrespective of whether the work is performed for an employer. However, as regards aviation and shipping, special rules are in force.

*Germany*. Article 2, paragraph 2, of EU Directive 89/391/EEC should be taken into consideration. This clause of the Framework Directive also extends to the supervision and control of labour protection regulations as called for in article 4, paragraphs 2 and 11, paragraph 6, of the Directive. The extension of ILO Convention No. 81 should not go beyond those provisions.

Confederation of German Employers' Associations (BDA): The extension of Convention No. 81 to the NCS sector does not concern the Confederation, as it represents exclusively members in the commercial sector. However, it supports the principle of equal regulations for labour inspection in both the commercial and non-commercial sectors, and, hence, the general objective of extending Convention No. 81 to the NCS sector.

*Italy*. The Government observes that the concept of labour protection and inspection, for which provision is made under the Italian Constitution, should have the widest application possible, with a view to preventing unfair inequality of treatment between workers with dependent employment relationships. Non-industrial service activities have increased, particularly in recent years, with the emergence of many enterprises which operate under the same conditions and with the same risks as commercial and industrial enterprises but are excluded under Convention No. 81 from the scope of inspection activities (for example, data processing, transport and communications, the so-called advanced tertiary sector). The State and other public bodies, in addition to their political responsibilities and the management of public administration, are also playing an increasingly direct role in service activities, both as monopolies or in competition with the private sector. Workers in such situations should work under conditions similar to those in the commercial and industrial sectors; hence the need to make provision for effective labour protection. The Government therefore fully supports the extension of Convention No. 81 to activities in the NCS sector. This extension would enable the ILO and member States to become more aware of their fundamental role in monitoring and safeguarding working conditions, and of the fact that the vast public administration sector should not be exempted from this function. In the field of occupational safety and health, none of the activities in which comparable workers are employed should be excluded *a priori* from the application of social legislation or be exempt from supervision by the State inspection services (labour inspectors or other public inspection services).

Italian Confederation of Industry (**CONFINDUSTRIA**): The Confederation is in favour of extending the Convention to sectors previously excluded from it, in the interests of equal treatment of all sectors, and is prepared to discuss in detail the standards that will be submitted on this subject to the next session of the Conference.

Association of Credit Institutes' Trade Unions (**ASSICREDITO**): The Association supports the proposed extension to workers in public administration, as well as in the armed forces, prison service, etc., of the same labour protection standards as those applicable in other sectors. It would therefore be appropriate to establish effective standards ensuring equality of treatment for all workers, irrespective of the sector in which they work.

*Japan*. Japanese Trade Union Confederation (**RENGO**): The Confederation is in favour of the adoption of an international instrument(s) by the Conference to extend Convention No. 81. An inspection system is essential for improving the working conditions of persons employed in the public and other non-commercial services sectors, which are not currently covered by the Convention. Public sector workers in Japan, are covered by labour inspection or a substitute system, depending on their official duties, but sometimes no such system exists. RENGO takes a positive view of the issues raised in the questionnaire, because the Convention should be extended to workers in the NCS sector at large, in which public servants predominate. It also feels that there is scope for improving Convention No. 81 itself, such as clearer definitions of duties under the Convention.

*Korea, Republic of*. Korean Employers' Federation (**KEF**): The improvement of working conditions through labour inspection would contribute to the maintenance of sound labour relations. In this sense, it might be desirable to extend Convention No. 81 to the NCS sector workplaces in order to prevent labour disputes. However, most developing countries, including Korea, could not implement labour inspection in the NCS sector due to lack of funds and qualified labour inspectors. The complex nature of non-commercial activities might also be an obstacle to periodical labour inspections. Furthermore, too many exceptions would have to be made in standard setting, which would hamper the validity and effectiveness of such standards. If an international instrument were nonetheless to be adopted, it should take the form of a Recommendation.

Federation of Korean Trade Unions (**FKTU**): The Federation considers it necessary and important for the Conference to adopt an international instrument to protect workers in the NCS services sector not covered by Convention No. 81.

*Mexico*. The Government feels that it might be appropriate to consider extending labour inspection services to the national NCS sector. However, since Mexico has not ratified Convention No. 81, it might also be appropriate to examine a new approach to the concept of labour inspection, not merely from the point of view of the application of sanctions in cases of

infringements of labour standards, but as regards the promotion and development of better working conditions. There was as yet no labour inspection service for government employees under the provisions of the Basic Act of the Federal Public Administration.

*Moldova, Republic of.* Independent Federation of Trade Unions (IFTU): The Federation is in full agreement with the ILO proposals to adopt a standard on the status and competences of labour inspection in the NCS sector and approves the content of the Office report.

*Namibia.* The Government considers it necessary for the Conference to adopt an international instrument(s) extending Convention No. 81 to the NCS sector. In many, if not most, countries, persons employed in non-commercial services do not enjoy adequate labour protection. However, in Namibia, the Labour Act, 1992, already covers industrial, commercial and non-commercial sectors, with the exception of members of the defence force and police.

*Netherlands.* Logic and common sense would dictate that in order to achieve the desired extension, the instrument should take the form of a Protocol. However, in view of the character of the activities to be covered, a Recommendation might at this stage be the only acceptable form. If a majority favours a Protocol, the text should be strictly limited to the extension, as there will only be a single discussion.

Netherlands Trade Union Confederation (FNV): A Protocol to Convention No. 81 would be most appropriate. FNV disagrees with the Government's view that, considering the character of the activities to be covered, a Recommendation might at this stage be the only acceptable form of international standard. The Government did not appear to give any reasons in support of its position.

*New Zealand.* The references to New Zealand in the report are outdated, following the adoption of the Health and Safety in Employment Act, 1992. As a result of this new legislation, there are unlikely to be any significant obstacles to New Zealand ratifying a new instrument, provided that it is appropriately worded.

New Zealand Employers' Federation (NZEF): In the view of the Federation, the ILO should, as a general rule, move away from Conventions to a regime of non-prescriptive guidelines or codes of practice in the form of Recommendations. The Federation does not therefore consider that the extension of the present Convention should go ahead as proposed. As is apparent from the ILO's report, there is some difficulty in defining the NCS sector. Therefore, if a new instrument is to be introduced, it should make clear that private dwelling houses are excluded from its application. With that exception, the Federation agrees with the Government that there are unlikely to be significant obstacles to New Zealand ratifying a new instrument of the kind proposed.

*Portugal.* The scope of labour protection should not depend on the nature or form of activity in which workers are engaged (whether in the private sector or the public/administrative sector). The new instrument would allow for the universal application of international labour standards and ensure equal protection for all workers. However, the instrument should be flexible enough to take into account differences in the level and conditions of development of member States, without prejudice to its universal application.

General Confederation of Portuguese Workers (CGTP): The proposed extension of the Convention would be in the interests of workers. Such an extension would not only open up innovative possibilities for all those who work in the subsectors of these services, but would provide a wider guarantee of workers' rights in general. The efficiency and operational aspects of the labour inspection system should remain internal matters for each member State. The benefits of such extension can be seen from the references made to Portugal in the report itself. The regulation of this matter should be as exhaustive as possible.

*Saudi Arabia.* In the view of the Government, international labour standards governing labour inspection stem from the fact that employers in the private sector look essentially for profit, which may, in one form or another, give rise to violations of guarantees under labour protection legislation; hence, the importance of regulations for effective inspection. At present, only State activities are outside the purview of such supervision. As these do not have any profit objective, and since all persons working in such activities depend on the State which ensures to

the best of its ability the application of the protective guarantees to which employees in these activities are entitled, it does not appear necessary to adopt any further instrument(s) to extend Convention No. 81 to the NCS sector.

*Spain.* Under Spanish legislation, the Labour Inspectorate is not the competent authority for classifying the various sectors of economic activity; instead, legislation defines the area of activity of the labour inspectorate by specifying the pertinent regulations for monitoring and inspection in each case — including for safety and health, social security, migration and employment — and the rights and obligations binding on both physical persons and legal entities liable to inspection regardless of their activity. While the law defines some exceptions to such inspections, such exceptions do not include anything equivalent to "non-commercial services". They are limited to civil servants, judges, military personnel, and state armed and security services, inasmuch as labour protection legislation does not apply to them. Persons working in the public sector and not covered by a special relationship under administrative law, but instead by legal labour relations with any administration, are included in the scope of labour inspection. The law also expressly excludes certain workplaces from inspection, namely: military centres and establishments; national defence industries; sites and facilities for diplomatic representations under extraterritorial privileges, and those protected under specific provisions of international agreements. The extension of inspection to non-commercial establishments is therefore the general practice, provided that the work in those establishments is subject to labour relations or covered by social security legislation, with no exceptions other than those indicated above. On the basis of article 26 of Convention No. 81, the Spanish authorities have made no exceptions other than the ones mentioned.

General Workers' Union (UGT): Under current Spanish legislation on to this subject inspections are strictly limited to labour relations. Independent workers and those holding administrative posts (civil servants) are not included in the scope of inspection. The labour inspectorate may, however, issue warnings or make recommendations, as well as stop work presenting a serious and immediate risk to workers not covered by labour relations in the strict sense. Undoubtedly, many workers are not protected by labour inspection, and their conditions of work are imposed by administrative authorities, leaving them with no recourse in hazardous situations or where occupational safety measures are lacking. Even in the public service, almost one-third of the workers are currently employed under short-term labour contracts and are not covered by administrative law. Their employers are public bodies lacking inspection services. Consequently, in cases of inadequate workplaces, conditions of work fail to meet minimum standards. In these circumstances, the ILO's decision to examine the possibility of extending labour inspection to the NCS sector is appropriate.

*Suriname.* The Government states that the absence, or less comprehensive nature of protective provisions covering civil servants and NCS-sector employees no longer appears acceptable.

*Sweden.* The Swedish ILO Committee, supported by all the bodies consulted, found that for Sweden's part there was nothing to prevent the extension, as proposed in the report, of Convention No. 81 to the public service sector. Already for a long time, the supervisory activities of the Labour Inspectorate have covered both national and local government. The Committee agrees that the proposed extension should take the form of a Protocol to Convention No. 81.

*Switzerland.* According to the Government, workers in the NCS sector often perform identical activities involving the same risks and problems as those in industrial and commercial establishments. Some activities in non-commercial services are carried out by workers without adequate training, thus increasing the risks. The Government therefore considers that workers in this sector should be protected in the same way as those in the private sector.

Christian Trade Union Confederation (CNG): The NCS sector is subject both to much stronger competition and to the need to improve its services. However, in particular because of financial and budgetary constraints, there is an increasing risk that new demands on the sector or subsectors will lead to a degradation of labour protection. For this reason the CNG supports the ILO's intention to extend Convention No. 81 to the NCS sector.

Central Union of Swiss Employers' Associations (UCAP): As Switzerland has ratified Convention No. 81, and labour inspection is a long-established tradition in the country, the Association has no objection *a priori* to its extension, though it believes that each State should be able to exclude sectors that are not suited to such inspection (e.g. the Swiss militia-type army). Certain public sector services (e.g. hospitals) are already covered by the labour inspectorate, as are the federal administration services, since 1993. The federal police is only covered by the Ordinance on occupational health. This is not the case at the cantonal level with regard to the police and fire brigades. Fire brigades, being organized as a militia, are not concerned. On the other hand, postal and railway services have their own legislation and call on the labour inspectorate services to help them enforce it. For these sectors, systematic extension of the Convention could pose enforcement problems. Moreover, if such extension implies an increase in the labour inspectorate's staff, this would go against the whole process of rationalizing State finances. In a nutshell, Switzerland has reached a sufficiently high standard of working conditions in general, both in the private and in the public sector, and the extension of Convention No. 81 is therefore viewed by the UCAP as being of little relevance and not a priority issue.

*Turkey*. Turkish Confederation of Employers' Associations (TISK): The enforcement of laws relating to occupational safety and health, which occupy an important place in Turkish labour regulations and in inspections made in workplaces, is extremely haphazard. Some regulations and rules which have been put into effect are not compatible with conditions in Turkey. This situation has given rise to difficulties of application, as well as opening the way to subjective and contradictory assessments during inspections. Moreover, in carrying out inspections in workplaces, the aim should not be to punish employers and their representatives. The continual increase in administrative fines in Turkey has not resulted in any improvement in application, but on the contrary burdened enterprises with new financial inconveniences and problems. The Confederation points out that the imposition of fines should never be the aim of inspection. These views, which have already been mentioned on various occasions, need to be reiterated.

*United Kingdom*. The Government considers that the Conference should adopt an international instrument to extend Convention No. 81 to workplaces not considered to be industrial or commercial for the purposes of its application. Health and safety legislation in the United Kingdom already applies to the NCS sector. Labour inspectors approach their task in similar ways in all sectors.

Trade Unions Congress (TUC): The TUC also considers that the Conference should adopt an international instrument or instruments to extend Convention No. 81 to workplaces not considered to be industrial or commercial for the purposes of its application. The TUC has for some time argued that Crown property, such as Ministry of Defence premises, should be brought within the enforcement arm of the Labour Inspectorate (HSE). There appears to be no real reason why the armed services should not be subject to the same controls and enforcement obligations as other public service bodies. The comprehensive inclusion of schools within the ambit of the HSE would do away with current anomalies arising in the enforcement of health and safety in schools, colleges and other establishments of further education where distinctions are drawn between the office as a workplace and the classroom or workshop. The inclusion of this sector within the scope of the Convention would enhance and clarify present conditions in the United Kingdom. The TUC views the proposed instruments as an opportunity to enable a greater number of working people to come under all-embracing health and safety legislation. It recognizes some of the difficulties that the application of such an instrument in the UK might raise, particularly in relation to the armed services, and the police and prison services. However, the TUC is certain that with a little application a suitable means of implementing this standard in the United Kingdom could be found.

*United States*. US Council for International Business (USCIB): There is no reason to distinguish the NCS sector from the labour inspection requirements applicable to the private sector under Convention No. 81. The USCIB believes that one reason why ILO Conventions tend to be too detailed and impractical is that the public or non-commercial sector is frequently not covered by such Conventions, and is thus seen to be above the law. Consequently, without having any real stake in terms of applicability of substantive provisions, governments tend not

to take as realistic and hard a view of the consequences of international labour regulations as they would if the requirements applied directly to them. Therefore, making the provisions of the Convention applicable to the NCS sector would be a step in the right direction towards adding greater realism and rationality to the development of ILO standards. To the extent that the Conference adopted standards different from, or containing lesser requirements than in, Convention No. 81, the USCIB would advocate that the terms of Convention No. 81 be revised to create identical requirements for the private, public and non-commercial sectors.

*Uruguay*. Although in Uruguay, owing to ratification of the Occupational Safety and Health Convention, 1981 (No. 155), the Labour Inspectorate is empowered to inspect the NCS sector, including public services, and such inspections are carried out regularly, it is not a competent authority as regards general conditions of work of civil servants and cannot assume international commitments in that respect. Under a constitutional mandate, civil servants are subject to statutory regulations with duties, obligations and guarantees whose enforcement has been assigned to other public bodies.

The great majority of governments and employers' and workers' organizations emphasized that workers in the NCS sector should not have lower standards of labour protection than those applying in industry and commerce, and should be subject to an effective and impartial labour inspection system. Concern was expressed that in some member States there was little or no inspection or other means of enforcing such protective legislation as exists. Other Members underlined the need for a degree of flexibility to encourage wider ratification of the future instrument. Where in their general observations Members raised matters of detail, these are mentioned, as necessary, under the relevant question.

## I. Form of the international instrument(s)

*Do you consider that the International Labour Conference should adopt an international instrument(s) to extend the Labour Inspection Convention, 1947 (No. 81), to workplaces not considered to be industrial or commercial for the purposes of its application?* **Qu. 1**

*Total number of replies: 62.*

*Affirmative: 58.* Algeria, Angola, Australia, Austria, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Ethiopia, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Mauritius, Republic of Moldova, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Spain, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay.

*Negative: 4.* Argentina, Bangladesh, Mexico, Saudi Arabia.

*Bangladesh*. Bangladesh Employers' Association (BEA): Bangladesh has embarked upon market-oriented reforms, deregulation of the labour market, and promotion of job opportunities

through labour-intensive growth. Such reforms have necessitated flexible approaches to regulating labour inspection matters. Many countries are unable to ensure full compliance with existing legal provisions due to resource constraints, shortage of trained manpower, lack of logistic support, etc. The proposed extension would therefore add more problems than it would solve. Instead of adopting a new international instrument, the ILO might adopt promotional measures for strengthening existing labour inspection services, and for providing technical assistance to internal supervision and inspection in the NCS sector.

*Belarus*. Yes. Such an instrument would serve to concentrate attention on questions of labour protection in workplaces of the NCS sector.

*Benin*. Yes, since it is necessary to take measures against the risks prevalent in these workplaces, and to raise awareness of their personnel concerning such potential risks.

*Colombia*. Geographical conditions of the member State should be taken into consideration in order to determine in which areas a more far-reaching system of inspection is required.

General Confederation of Democratic Workers (CGTD): If the ILO wishes to redraft Convention No. 81, it should change the method of application whereby labour inspectors would serve as judges, empowered to issue a definitive ruling on cases to which they were assigned. At present, labour inspectors are merely conciliators. Since in most cases the employer is not amenable to conciliation, workers have had to resort to costly legal procedures, which have usually taken many years to produce a decision.

*Finland*. Yes. Such an extension would conform with legislation and inspection practice already in force in Finland.

*France*. French Democratic Confederation of Labour (CFDT): Yes.

*Greece*. General Confederation of Greek Workers (GCGW): Yes.

*Italy*. Yes, in so far as the same risks are present in industrial and commercial activities.

General Confederation of Trade, Tourism and Services (CONFCOMMERCIO): No.

*Japan*. RENGO: Yes.

*Mexico*. A national study of proposals to extend Convention No. 81 to the police and other security services, prison services, fire brigades, education services, health services, postal and telecommunications services, cultural and recreational services, and the armed services has concluded that it is not feasible to include these activities, as they are governed by specific regulations for which the Mexican Federal Labour Inspectorate is not competent. These categories should continue to be subject to their own regulations, as they do not in general present sufficient similar elements or characteristics from the standpoint of labour to merit consideration within the same scope of labour inspection. Inspection is applicable to worker-employer relations insofar as general labour regulations governing workplaces should be observed. Such workplaces are understood to be economic units for the production or distribution of goods or services as provided for in national legislation. Accordingly, the Government considers that the additional categories listed for the extension of Convention No. 81, deemed to be non-commercial, do not fall within the competence of the labour inspectorate. Consequently, the questionnaire drafted on the extension of Convention No. 81 does not apply to Mexico.

*Switzerland*. UCAP: No.

Almost all the replies received from governments, as well as those from employers' and workers' organizations, recognized the need for an instrument(s) that would focus necessary attention on labour protection in the NCS sector. Only four governments and three organizations considered this to be unnecessary. The objections of the Governments of Argentina and Mexico were in essence that many of the activities in the NCS sector did not fall within the competence of their labour inspectorates. The government of Bangladesh referred to the state of economic

development and other social conditions which would hinder it from accepting the proposed extension. The Government of Saudi Arabia held the view that, since activities in the NCS sector were operated not for profit but by the State, the State would naturally look after its own employees, and there was therefore no need for the proposed extension. These are all matters of substance which are dealt with later in this report.

Thus, since almost all the replies were affirmative, the Office proposes an instrument to extend the Labour Inspection Convention, 1947 (No. 81), to workplaces not considered to be industrial or commercial for the purposes of its application.

*If so, do you consider that the instrument(s) should take the form of:* **Qu. 2**
*(a) a Protocol to the Labour Inspection Convention, 1947 (No. 81)?*
*(b) a Protocol supplemented by a Recommendation?*
*(c) a Recommendation?*

*Total number of replies: 58.*

*Affirmative for the adoption of a Protocol: 37.* Algeria, Australia, Belarus, Brazil, Bulgaria, Canada, Cuba, Czech Republic, Egypt, Ethiopia, Finland, Germany, Hungary, Ireland, Kuwait, Lebanon, Lithuania, Republic of Moldova, Morocco, Myanmar, Namibia, Nicaragua, Philippines, Portugal, Romania, Russian Federation, Slovakia, Spain, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States.

*Affirmative for the adoption of a Protocol supplemented by a Recommendation: 10.* Angola, Austria, Belgium, Benin, Colombia, Cyprus, Italy, Norway, Poland, Seychelles.

*Affirmative for the adoption of a Recommendation: 7.* Ecuador, Indonesia, Republic of Korea, Latvia, Peru, Sudan, Uruguay.

*Other: 4.* Denmark, Mauritius, Netherlands, New Zealand.

*Austria.* BAK: Yes, for the adoption of a Protocol.

*Canada.* Communications, Energy and Paperworkers' Union (CEP): A Protocol is the strongest and clearest way of asking governments to act.

*Colombia.* National Association of Industry (ANDI): A Convention.
CGTD: Yes, for the adoption of a Recommendation.

*Denmark.* No preference as regards the form of the instrument.

*Egypt.* Egyptian Federation of Trade Unions (EFTU): A protocol supplemented by a Recommendation.

*Finland.* At this stage, supplementing the Protocol by a Recommendation does not appear necessary. If during the Conference discussions issues turned up which would make it seem

reasonable to include in a Recommendation, the Government would not oppose the adoption of such a Recommendation.

*France*. CFDT: Yes, for the adoption of a Protocol.

*Germany*. Confederation of German Trade Unions (DGB): The instrument could take the form of a separate Convention or a Protocol to Convention No. 81. In any case, labour inspection should be extended to all activities in the NCS sector, including religious institutions. In doing so, one should further ensure that the supervision of state establishments is entrusted to a separate inspectorate, independent of the executive and responsible only to the legislative authority.

*Greece*. GCGW: Not opposed to the adoption of a Recommendation to supplement the Protocol.

*Ireland*. Either a Protocol to the Labour Inspection Convention or a revised comprehensive Labour Inspection Convention.

*Italy*. CONFCOMMERCIO: Yes, for the adoption of a Recommendation.
Italian Confederation of Employers (CIDA): Yes, for the adoption of a Recommendation.

*Japan*. RENGO: Yes, for the adoption of a Protocol supplemented by a Recommendation.

*Korea, Republic of*. FKTU: Yes, for the adoption of a Protocol.

*Mauritius*. This should be decided by international consensus.

*Moldova, Republic of*. Independent Federation of Trade Unions (IFTU): Yes for the adoption of a Protocol supplemented by a Recommendation.

*Netherlands*. Protocol or Recommendation.
FNV: Yes, for the adoption of a Protocol.

*New Zealand*. The Government considers that the most appropriate form for such an instrument would be a new Convention, which would replace and extend the coverage of Convention No. 81. Alternatively, option (a) is preferred — a Protocol to Convention No. 81.
NZEF: Yes, for the adoption of a Recommendation.

*Portugal*. CGTP: Yes, for the adoption of a Protocol supplemented by a Recommendation.

*Spain*. The Protocol should refer only to employer-worker labour relations.
UGT: The instrument should take the form of a Convention.

*Turkey*. TISK: Yes, for the adoption of a Recommendation.

*United Kingdom*. TUC: Yes, a Protocol supplemented by a Recommendation.

*United States*. USCIB: The Council believes that there was a certain leap of logic by the Governing Body in deciding that this matter should be dealt with under the single-discussion procedure, and that a Protocol was the most relevant legal form. Certainly, a Convention would also be appropriate and, if substantially different requirements were established, a two-year discussion might in fact be the best method of assuring the integrity of distinctions made with respect to non-commercial services.

*Uruguay*. National Chamber of Commerce (CNC): Yes, a Protocol.

Several positions emerged from the replies to Question 2. Almost two thirds of the Members replying expressed their preference for the adoption of a Protocol. Some Members would have preferred a new Convention to cover the matter under review, others would have preferred an entirely new and revised Convention, but alternatively accepted the case for a Protocol to Convention No. 81. Those in favour of a Protocol

supplemented by a Recommendation, or a Recommendation only, set out their reasons in response to Questions 20 and 21.

Since only eight countries preferred the adoption of a Recommendation alone, the Office has followed the majority view that a Protocol is the most appropriate form of the new instrument. The text of the Proposed Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), is included in this report.

## II. Preamble

*Should the instrument(s) contain a preamble referring to relevant ILO instruments, including the Labour Inspection Convention, 1947 (No. 81), and the Occupational Safety and Health Convention, 1981 (No. 155)?* **Qu. 3**

Total number of replies: 56.

*Affirmative:* 52. Algeria, Angola, Australia, Austria, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Ethiopia, Finland, Germany, Hungary, Ireland, Italy, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Norway, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Spain, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay.

*Negative:* 2. Colombia, Indonesia.

*Other:* 2. Netherlands, Peru.

*Algeria.* There appears to be a need for a Preamble in which the relevant instruments of the ILO, notably concerning labour inspection, would be mentioned.

*Austria.* Reference to Convention No. 81 is necessary; reference to Convention No. 155 appears essential in view of the tasks of labour inspection.

*Belarus.* The preamble should substantiate the necessity for, and advisability of, the new instrument.

*Canada.* Public Service Alliance (PSA): Yes, as the relevant ILO standards noted in the Preamble to the Occupational Health Services Convention, 1985 (No. 161).
Canadian Union of Public Employees (CUPE): Conventions Nos. 81, 155 and 161.

*Colombia.* ANDI: Reference only to Convention No. 81.
CGTD: Yes.

*Ethiopia.* Reference also to Conventions Nos. 129 (Labour Inspection in Agriculture) and 161.

*France.* CFDT: Yes.

*Greece.* GCGW: Yes.

*Italy.* CONFCOMMERCIO: No.

*Japan.* RENGO: Yes.

*Netherlands.* As the objective is only to extend the provisions of Convention No. 81 to the NCS sector, naturally this Convention should be mentioned. No reference should, however, be made to Convention No. 155, which is too detailed as regards the components of safety and health protection in comparison with Convention No. 81. This might also introduce an unwanted difference in protection between industry and commerce on the one hand, and the NCS sector on the other. Furthermore, Convention No. 155 has so far only received some 20 ratifications, and some 18 member States have excluded Part II (Labour Inspection and Commerce) and on the acceptance of Convention No. 81.

FNV: The FNV is in favour of referring both to Convention No. 81 and Convention No. 155. The reasons are clear: the Protocol should mirror the provisions of Convention No. 81 and these were meant to stimulate compliance at least with Convention No. 155. However, if reference to Convention No. 155 were to give some member States serious problems in ratifying the Protocol, it should be left out.

*Peru.* Reference to Convention No. 81 only.

*United States.* Yes. It could also be appropriate to list any other relevant Conventions and/or Recommendations.

The majority of replies to Question 3 were again in the affirmative. One organization proposed to add to the content of the preamble, in particular by referring to the Occupational Health Services Convention, 1985 (No. 161). Another wished to see references limited to Convention No. 81. Some employers' and workers' organizations supported these respective views. The Office follows the position of the overall majority. The preamble has therefore been included in the Proposed Protocol, duly worded so as to give recognition to the views expressed by the majority of Members.

**Qu. 4** *Should the preamble provide that the instrument(s) should have regard to the special risks to which workers in the workplaces referred to in question 1 may be exposed, the need to ensure that these workers are subject to the same degree of protection in terms of health, safety and conditions of work as those in industrial and commercial workplaces and the need to ensure that they are subject to the same or an equally effective and impartial system of labour inspection?*

*Total number of replies: 52.*

*Affirmative: 47.* Australia, Austria, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Ethiopia, Finland, Germany, Hungary, Ireland, Italy, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Philippines, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Turkey, United Arab Emirates, United Kingdom, Uruguay.

*Negative: 3.* Indonesia, Netherlands, Peru.

*Other: 2.* Republic of Korea, Suriname.

*Austria.* The need to ensure an equal or equally effective, impartial system of labour inspection is the real objective of the proposed instrument. Equal protection in terms of health, safety and conditions of work should be the aim in all areas of the NCS sector. However, it might not be possible in the case of certain services (ref. EU Directive 89/391/EEC, Article 2, para. 2), and should therefore be left to a case-by-case assessment.

BAK: The instruments should not only refer to relevant ILO standards, but the preamble should clearly state as objectives equality in protection as well as equality in supervision.

*Canada.* CUPE: No. The Protocol is viewed as a simple extension of Convention No. 81.

CEP: Yes. All occupations may have hazards unique to that occupation. Therefore, the wording "... should have regard to the special risks ..." should appear in the instrument(s) on labour inspection for all workplaces and work activities. This might require some modification of existing Conventions for industrial and commercial activities.

PSA: No.

*Colombia.* Everyone who provides services should be protected by a single, impartial system with no commitment to any labour policy handed down by the Government. The system should be strong enough to remain free of political manipulation.

*Denmark.* Danish Employers' Confederation (DA): If the intention is that the safety level and efficiency of the labour inspection system should at any time be the same as in the clerical field, the reply is no. But it could be accepted as a non-binding objective.

*France.* CFDT: Yes.

*Greece.* GCGW: Yes.

*Italy.* The preamble should recall the special risks facing workers employed in these sectors. Special attention should be given to the need to establish appropriate measures of guarantee, prevention and control by the State with a view to ensuring adequate protection of these workers in compliance with the principle that work should be protected equally in all its forms.

CONFCOMMERCIO: A standard-setting text which provides for the same degree of health, safety and working conditions protection to workers in the NCS sector as that enjoyed by workers in industrial and commercial enterprises does not seem to be very balanced. Such a proposal could have negative effects on enterprises, which would be subject to onerous provisions indiscriminately applicable to quite different workplaces. Therefore, possible new ILO standards should grant workers in the NCS sector protection related to the specific risks and hazards to which they are exposed.

*Japan.* RENGO: Yes.

*Korea, Republic of.* The varied applications to industrial or commercial workplaces, according to the conditions of Members, should be specified in the preamble.

FKTU: Yes.

*Netherlands.* No. The formula of Article 24 of Convention No. 81 — that would no doubt be used — ensures that the NCS sector would enjoy the same protection and inspection as industry and commerce. As compared to industry, it is doubtful whether one can speak of special risks for the NCS sector in general.

FNV: It does not appear sensible to address special risks to which workers in the NCS sector are exposed, because risks always differ within and between sectors. The Protocol should address the situation in the NCS sector, as far as possible, in the same way as in the private sector. A formulation which stressed the aim for an equally effective and impartial system of labour inspection could be agreed upon.

*New Zealand.* NZEF: Yes. NCS sector workers should have the protection of general industrial relations legislation, but recognizing that the rights and responsibilities of employees in paid employment are different from those of people working on a voluntary basis.

*Russian Federation.* The preamble should list the main unhealthy and hazardous aspects of working conditions to which workers in such workplaces may be exposed, and should stress the need to ensure that such workers are subject to an effective and impartial system of labour inspection.

*Suriname.* It should be mentioned that civil servants and NCS sector employees should enjoy to the same degree of protection in terms of health, safety and conditions of work as those in industrial and commercial workplaces.

*United Kingdom.* Yes. However, the same health, safety and welfare provisions are already expected to apply in similar circumstances in all sectors. Under the Health and Safety at Work Act, 1974, and the Management of Health and Safety at Work Regulations, 1992, employers are already required to assess the risks to employees and others arising from work and to control those risks as far reasonably practicable.

*United States.* USCIB: Yes.

The great majority of government replies were affirmative. Only three were against, one on the grounds that the Protocol would impose unjustifiable costs, and another that its objectives were already stated in the Convention. A number of comments specifically supported the approach proposed in Question 4, and a number of suggestions were made reinforcing the justification for the Protocol in terms of equality of protection and the need for impartiality and effectiveness of labour inspection. In taking note of these comments the Office has reflected the majority view in the text of the preamble for the Proposed Protocol.

## III. Definition, scope and application

**Qu. 5** *Taking into account the designation of the agenda item, should the instrument(s) contain a definition of the term "activities in the non-commercial services sector" to refer to categories of workplaces that are not considered as industrial or commercial for the purposes of Convention No. 81?*

*Total number of replies: 57.*

*Affirmative: 49.* Angola, Australia, Austria, Belarus, Belgium, Benin, Bulgaria, Canada, Colombia, Cuba, Cyprus, Denmark, Ecuador, Egypt, Ethiopia, Finland, Germany, Hungary, Indonesia, Italy, Republic of Korea, Kuwait, Latvia, Lithuania, Republic of Moldova, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Norway, Philippines, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay.

*Negative: 3.* Brazil, Czech Republic, Netherlands.

*Other: 5.* Algeria, Ireland, Lebanon, Peru, Spain.

*Algeria*. The definition of activities of the NCS sector, indicating that it consists of categories of establishments not considered as industrial or commercial, seems vague and insufficient.

*Australia*. It would be appropriate to define the term "activities in the non-commercial services sector" as those workplaces which are not considered industrial or commercial for the purposes of Convention No. 81. However, any listing of the types of workplaces covered should not be exhaustive, as otherwise possible new activities might be excluded.

*Austria*. A definition is essential to avoid wrong interpretations and misunderstandings.

*Belarus*. There should be a definition either of the term or of the principles that should be followed with reference to enterprises, organizations, etc., to refer to categories of workplaces not covered by Convention No. 81. This is considered necessary since the term is understood differently by different Members.

*Brazil*. National Confederation of Industry (CNI): Yes.
National Confederation of Commerce (CNC): Yes.

*Canada*. (PSA): To try and define such activities could be considered restrictive in nature.
CUPE: Yes, provided that the definition is not restrictive. The approach of letting ratifying Members define which activities should be covered for the purposes of inspection is not supported.
CEP: No, if defining the term would limit the number of workers and workplaces covered by the proposed instrument(s). It should be presumed that any worker or workplace not defined as "commercial" or "industrial" would be covered.

*Colombia*. The terms should be clear and specific: lack of clarity could result in misinterpretations and false expectations for workers.

*Denmark*. LO: The definition is superfluous, as Convention No. 81 should be extended to cover all work for any employer. The only exception should be "actual military service", i.e. activities where the armed forces, etc., participated in peace-keeping and war-type actions imposed upon them.

*France*. CFDT: Yes.

*Germany*. DGB: The term "categories of workplaces" is too narrow. Rather, all contractual relationships and activities, including home work, should come under the scope of the proposed instrument(s).

*Greece*. GCGW: Yes.

*Ireland*. It could be useful to set out the definitions, scope and application of the instrument on the lines of the Framework Directive 89/391/EEC (and as reflected also in the Irish Safety, Health and Welfare at Work Act, 1989, and in the Safety, Health and Welfare at Work (General Application Regulations), 1993).

*Italy*. Different interpretations could arise concerning the exact determination of the scope, in so far as there is no homogenous definition of "commercial" and "non-commercial" activities and different situations in fact exist in different countries.

*Japan*. RENGO: Yes.

*Lebanon*. It is difficult to establish a definition of the term "activities in the non-commercial services sector", although the instrument could contain some elements or data on which each Member could make a decision on the activities to be considered commercial or non-commercial.

*Lithuania*. Yes, a definition of the term as such.

*Namibia*. The definition of the term is very important for Members to understand it clearly.

*Netherlands*. On acceptance, Members should indicate to which workplaces in the NCS sector the provisions of the instrument would apply. Members should, however, be allowed to invoke exceptions for some workplaces under certain conditions, such as training, times of war, and for reasons of public order.

FNV: Yes.

*New Zealand*. Yes. A simple definition along these lines seems appropriate. This would then leave it to individual countries to determine the precise boundaries of what they mean by "industrial", "commercial" and "non-commercial". Attempting to define these further could lead to difficulties. If the alternative of a whole new Convention were to be adopted (as recommended in the answer to Question 2 above), the issue of such definitions might largely disappear, because the new Convention would cover all workplaces.

New Zealand Council of Trade Unions (NZCTU): The NZCTU believes that a new Convention applying the provisions of the existing Convention to all workplaces should be developed, obviating the need to engage in such definitions.

*Norway*. Yes. As regards scope, the instrument should emphasize that the Convention only applies to the relationship between workers and employers. The definition should not constitute a detailed operationalization that might lead to an exclusion of parts of the overall sector owing to possible ensuing shortcomings.

*Peru*. Owing to the difficulty of providing a single definition for this sector as a whole, it is suggested that these activities be called "non-commercial services", or otherwise the "tertiary sector", duly indicating the workplaces to be included therein.

*Spain*. Definition and scope should refer exclusively to labour relations and exclude those of a legal-administrative nature which pertain to civil servants, though not to those working for the State and covered by labour relations.

CGT: The instrument should cover every workplace where services are provided for other people, irrespective of the nature of labour relations (civil service or otherwise), with no exceptions.

*Sweden*. In principle, yes. It should in some way be made clear, however, that agriculture or shipping, for example, not coming under Convention No. 81, do not come under the new Protocol either.

*United States*. Yes. However, any such definition would have to conform with national law and practice.

USCIB: Yes. It should include all categories of public and non-commercial workers not included in Convention No. 81.

Opposing reservations were expressed as to the proposed definition. Some governments suggested that the formulation chosen in Question 5 was too vague. Others were concerned that too detailed a listing might inadvertently lead to the exclusion of certain workplaces or new activities. A number of governments suggested that the aim of the instrument should be to ensure that Convention No. 81, amplified by the Protocol, covered all work in any workplace for any employer. A few governments, expressly or by implication, proposed the exclusion of civil servants, but this is a matter taken up in Questions 7 and 8. The great majority of replies were again affirmative. New Zealand specifically commended, and the majority would appear to concur with, a simple definition along the lines indicated by Question 5. The Office has formulated the Proposed Protocol accordingly *(Article 1, paragraph 2)*.

***Should the instrument(s) define their scope, subject to possible exclusions as set out in question 7, in terms of all workplaces that are not already included among industrial or commercial workplaces to which legal provisions relating to conditions of work and the protection of workers while engaged in their work apply that are enforceable by labour inspectors?*** **Qu. 6**

Total number of replies: 57.

*Affirmative: 49.* Algeria, Australia, Austria, Belgium, Benin, Brazil, Bulgaria, Canada, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Ethiopia, Finland, Germany, Hungary, Indonesia, Italy, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Norway, Philippines, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Sudan, Suriname, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay.

*Negative: 1.* Netherlands.

*Other: 7.* Algeria, Belarus, Ecuador, Ireland, Peru, Spain, Sweden.

*Algeria.* The instrument should define its scope and allow for exclusions.

*Belarus.* The instrument should provide for the possibility of excluding specific provisions relating to specified categories of establishments not connected with industrial or commercial workplaces.

*Belgium.* CNT: The proposed instrument should provide Convention No. 81 with a large scope.

*Canada.* CUPE: Yes, without exclusions.
CEP: Yes. It should be presumed that all workers and workplaces not defined as "commercial" or "industrial" would be covered by the proposed instrument(s).

*Ecuador.* It should only include those sectors covered by the Labour Code, whether commercial or industrial, as certain categories listed in Question 7, paragraph 2, enjoy special treatment under national legislation and are governed by their own laws.

*France.* CFDT: Yes.

*Germany.* DGB: The term "workplace" should be defined in such a way as to include all sectors in which workers are active, such as domestic workplaces and travel for official (work-related) reasons.

*Greece.* GCGW: The scope of the new instrument(s) should not be too limited.

*Ireland.* See reply to Question 5.

*Italy.* Yes. The extent should define clearly, and as analytically as possible, the scope of the instrument while allowing member States to limit the application of the instrument in the event of adoption in accordance with national legislation and practice.

*Japan.* RENGO: Convention No. 81 should be applied as widely as possible.

*Netherlands.* See reply to Question 5.
FNV: yes.

*New Zealand.* See also comments on Questions 5 and 7.

*Peru.* See reply to Question 5.

*Spain.* See reply to Question 5.

*Sweden.* Wording corresponding to that of Articles 2, paragraph 1, and 23 respectivel the Convention would be appropriate.

*Switzerland.* No, because the proposed text risks depriving the Protocol of its esse content.

*Syrian Arab Republic.* Chamber of Industry (CoI): No.

There was again widespread support for this proposal, on condition that provis were made to allow for certain exclusions by member States. The governmen Sweden underlined that wording corresponding to Articles 2, paragraph 1, and 2 Convention No. 81 was appropriate. The Office follows the majority view in retain the proposal indicated in Question 6 for the Proposed Conclusions *(Article paragraph 3).*

**Qu. 7 (1)** *Should the instrument(s) provide for the exclusion of specified categor of workplaces from the scope set out in question 6?*

*Total number of replies: 57.*

*Affirmative: 45.* Algeria, Australia, Austria, Belarus, Belgium, Benin, Bra Bulgaria, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egy Ethiopia, Finland, Germany, Indonesia, Republic of Korea, Kuwait, Leban Lithuania, Mauritius, Morocco, Myanmar, Namibia, Nicaragua, Norway, Pe Philippines, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovak Sudan, Suriname, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirat United States, Uruguay.

*Negative: 9.* Angola, Hungary, Italy, Republic of Moldova, Netherlands, N Zealand, Sweden, Switzerland, United Kingdom.

*Other: 3.* Canada, Ireland, Spain.

*Australia.* Australian Council of Trade Unions (ACTU): There appears to be no obvi reason for exclusions to be identified.

*Austria.* The instruments should provide the possibility to exclude certain categories workplaces listed in paragraph 2. Austria would presumably make use of such an exclusion the case of fire brigades and rescue services because of their special structure (voluntary, employee status). Exclusion should only be permitted on the basis of well-founded obligati in the frame of, or congruent with, EU Directive 89/391/EEC.

*Belgium.* In principle, yes. However, these exclusions should not be applicable to matt concerning the working environment (occupational safety, hygiene and medicine).

*Benin.* Not all workplaces could be included in the scope of the instrument(s). For object reasons, member States might wish to reserve access to certain workplaces exclusively to the habitually employed there.

*Brazil.* CNC: Except for occupational categories not governed by labour legislation,

*Canada*. The Government proposes to "delete" Question 7, paragraph 1, as Chapter II of Report VI (1) indicates a broad range of approaches among member States as to which categories of workplaces comprise the NCS sector, and the extent to which labour inspection is available to them. Consequently, there is a need for flexibility in the instrument to take account of circumstances and practices in different member States, which would enhance the potential for ratification. The Protocol should provide, along the lines of Article 3, paragraph 1, of the Part-time Work Convention, 1994 (No. 175), that a Member could, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from its scope categories of non-industrial and non-commercial workplaces, when the application of the Convention to those categories would raise special problems of a substantial nature.

Canadian Labour Congress (CLC): No.

CUPE: No exclusions, as labour protection and inspection should apply to all areas of the NCS sector.

CEP: There is no reason to exclude any workplace from labour inspection.

PSA: Yes.

*Colombia*. CGTD: There should be no exception whatsoever, as this would be detrimental to the workers.

*Czech Republic*. Czech-Moravian Chamber of Trade Unions (CMCTU): No.

*France*. CFDT: The CFDT affirms the general principle of non-exclusion, even if additional provisions require particular arrangements for the armed services, the police, etc. In any case, such special arrangements should be the object of negotiation between the employers and the workers' organizations concerned, as well as the representatives of interested workers in tripartite committees, etc.

*Germany*. DGB: The exclusion of certain categories of workplaces is rejected. Rather, it should be ensured that all NCS sector activities are enumerated in the form of a catalogue of specific inclusions such as religious institutions, charities, etc.

*Greece*. GCGW: It is not advisable to exclude, *a priori*, specified categories of workplaces from the scope of the instrument. However, certain categories could be excluded to facilitate approval of the instrument.

*Ireland*. The scope of the instrument should mirror that of EU Directive 89/391/EEC, the Safety, Health and Welfare at Work Act, 1989, and the Safety, Health and Welfare at Work (General Application) Regulations. This would allow for the non-applicability of the instrument to certain specific public service activities such as the armed forces and police, while ensuring that the safety and health of relevant personnel is ensured as far as possible.

*Italy*. The instrument should not *a priori* exclude any category of enterprise or worker from its scope. Provision could be made to allow member States to exclude some sectors from inspection for reasons of state security and privacy in special sectors or for reasons of public order.

CIDA: Yes.

CONFCOMMERCIO: The Confederation's members include private enterprises in many non-commercial services. The aim is not that such enterprises, or some of them, should be excluded from the scope of a new instrument, but rather that account should be taken of their particular characteristics and specific requirements. The regulation of labour inspections in specific spheres could be deferred for the time being – for example as regards the advanced tertiary sector, the boundaries of which are not yet fully established.

*Japan*. RENGO: Yes.

*Korea, Republic of*. KEF: The exclusion of special workplaces should be determined voluntarily by the Member according to its national situation. Such exclusion should be subject to prior consultation with the most representative organizations of employers and workers.

*Netherlands*. No. Members should, however, be allowed to invoke exceptions for some workplaces under certain conditions, such as training, in times of war, and for reasons of public order.

*New Zealand.* NZEF: Yes.

*Portugal.* Confederation of Portuguese Industry (CIP): No.

*Spain.* All workers providing services under non-labour legal provisions should be excluded.

*Sweden.* The instrument should not expressly provide for the exclusion of the categories of workplace specified in Question 7, paragraph 2 (c). However, the Labour Inspectorate in Sweden has no supervisory responsibilities concerning work on board ships, be they warships or merchant vessels. This applies to both military and other personnel.

*Switzerland.* No. It should not be permitted to exclude *a priori* certain sectors mentioned. If necessary, Members could envisage a special inspection system (in the sense of Question 4) excluding certain categories of workplaces when ratifying the Protocol.
CNG: No.

*Syrian Arab Republic.* CoI: No.

*Tunisia.* Exclusion of certain categories is considered necessary. This would facilitate ratification of the instrument by a large number of Members.

*Turkey.* Confederation of Turkish Trade Unions (TÜRK-IS): No.

*United Kingdom.* There should be no exclusions in any of the categories of workplaces indicated. However, allowance should be made for any exemption already in force, and there could be scope for exploring the feasibility of a caveat along the line of Article 2.2 of EU Directive 89/391/EEC, which recognizes that there could be conflicts between operational work of the police and the application of health and safety legislation.
TUC: The TUC sees no reason for the exclusion of any of the 14 specified categories in Question 7, including the armed services, whether uniformed personnel or non-uniformed employees. The UK armed services continue to be unaccountable on issues of health and safety. Because of the cloak of secrecy surrounding their operations, the record on health and safety is difficult to establish. The TUC is more than confident that arrangements could be made to ensure that, where necessary, state security is maintained. This should not, however, be an excuse for the exclusion of the armed services from regular health and safety law and enforcement.

*United States.* Yes. Each Member should determine any such exclusion(s) in line with national law and practice.
USCIB: No.

**Qu. 7 (2)** *If so, which of the following categories of workplaces that are not already included among industrial or commercial workplaces for the purposes of Convention No. 81 should be excluded from the scope of the new instrument(s)?*

*(a) national (federal) government administrative services?*

*(b) provincial, regional, district or local administrative services?*

*(c) the armed services? (Please distinguish between uniformed personnel and non-uniformed (civilian) employees.)*

*(d) the police and other public security services?*

*(e) prison services? (Please distinguish between prison staff and inmates performing work.)*

*(f) fire brigades and other rescue services?*

*(g) education services (primary, secondary, tertiary)?*

*(h) health services, including laboratories?*

*(i) postal and telecommunication services?*

*(j) public transport services, including railways?*

*(k) utilities such as electricity supply, gas, water, waste collection and disposal?*

*(l) social and welfare services, including charities?*

*(m) cultural and recreational services?*

*(n) other categories of workplaces not already considered to be industrial or commercial for the purposes of Convention No. 81? (Please specify.)*

*Total number of replies: 39.*

*Algeria.* (a), (c), and (d). Civil protection and emergency rescue services should also be excluded.

*Australia.* (c) uniformed personnel only, (e) prison inmates. In Australia, military personnel are not "employees". Enlisted members are covered by Crown prerogative. Under the Defence Act, the appointment of commissioned officers does not create a civil contract of employment. The armed services are excluded from the definition of "public sector employment" under the Industrial Relations Act 1988.

Australian Chamber of Commerce and Industry (ACCI): (c) uniformed personnel in the armed services; no exclusion for any other categories.

*Austria.* (c) armed services, or parts thereof, stationed in buildings or establishments of special military status; parts of barracks serving as quarters or for the presence or service of drafted personnel; (e) those parts of prisons used for the accommodation, confinement or employment of inmates. Services mentioned in (i), (j) and (k) should not be exempted under any circumstances.

*Belarus.* (a), (c) except civilian employees, (d) except civilian employees, (e) except civilian employees and inmates performing specific tasks, and (f), except for such services in enterprises.

*Belgium.* (a) and (b) and bodies depending directly on them. (c) to (n) should not be excluded unless they are part of the administrations mentioned under (a) and (b) (the armed services, for example). Such exclusion should not apply in the field of occupational safety, hygiene and medicine, except, for example, for embassies and consulates, the European institutions, foreign military bases, etc., becasuse of the principle of extra-territoriality, (exempting Belgian personnel).

CNT: If certain exceptions are to be allowed, they should be limited. The issue of exempting extra-territorial establishments should be raised, given the difficulties that could arise from their submission to the control of the labour inspectorate.

*Benin.* (c) uniformed personnel only; (e) inmates performing work only.

*Brazil.* (c), (d) excluding civilian personnel, and (f).

CNT: (c) to (f).

CNC: See answer to Question 7, paragraph 1.

*Bulgaria.* (c) uniformed personnel only, (d) police in uniform only, (e) prison staff and inmates, and (f). All other categories of workplaces except those indicated above should come under the scope of the instrument, including civilian personnel in the armed services, the police, fire brigades and other rescue services, as well as in prisons.

*Canada*. The Government proposes to delete Question 7, paragraph 2, because any of the listed categories could present special problems of a substantial nature for certain countries. For example, in Canada this would the case for paragraphs (c), (d), (e) (inmates performing work) and (f), since operational requirements and circumstances would make conventional labour inspection inappropriate for such categories of workplaces. The Government would wish to examine more closely the question of which categories it would wish to exclude from the scope of the Protocol, as part of a future assessment of the potential for ratification.

PSA: (c) where uniformed employees are exclusively employed. However, armed forces workplaces shared by civilian and uniformed personnel, or exclusively used by civilians, should not be excluded.

*Colombia*. (c) and (d).
CGTD: (a), (c) and (7).

*Cuba*. (c), (d), (e) and (f).

*Cyprus*. (c), (d), (e) and (f). Non-uniformed (civilian) employees should not be excluded.

*Czech Republic*. (c), uniformed personnel only, and (d).

*Denmark*. (c), actual military service-type work.

*Ecuador*. (a), (c), (d) and (e).

*Egypt*. (a) to (j); as to (k), only utilities such as electricity supply, gas and water.

*Ethiopia*. (c) uniformed personnel, (e) and (l).

*Finland*. (c) not, however, non-uniformed employees; (d) mainly operational activities; (f) mainly operational activities. While it is advisable to allow the possibility of certain exceptions, these should be very limited and fewer than those listed in paragraph 2 of the Question. Concerning the armed services, it would be sufficient to exclude work related to military training. In Finland, workplaces and the staff of the police administration as such fall within the scope of labour inspection. However, the police have a special duty to maintain public law and order, and therefore cannot refrain from performing even highly dangerous tasks on safety grounds. Hence, it is not possible in particularly dangerous situations to protect completely against all health and safety hazards. Workplaces and staff of the fire and rescue department fall within the scope of labour inspection. Like the police, they also have a special duty to act in dangerous situations.

*Germany*. Members should have the possibility of excluding particular categories of workplaces from the scope of the instrument(s), if the particularities of certain specific activities peremptorily exclude their application. The enumreration of individual categories of workplaces eligible for exclusion is not considered appropriate.

*Greece*. GCGW: (c), (d), (e) and (f) could be excluded, if this would facilitate adoption of the instrument.

*Indonesia*. All categories, except (h), (l) and (m).

*Ireland*. The Safety, Health and Welfare at Work Act, 1989, and Regulations made under it apply to persons and places of detention unless their application is incompatible with safe custody, good order and security. While the Act applies primarily to employed person, its also contains general provisions relating to non-employees who could be affected by work activities. It also applies to members of the armed services except when on defined active duty, engaged in action in the course of operational duties at sea, engaged in operations in aid of the civil power, or engaged in training directly associated with any of the foregoing activities.

*Italy*. (c) to (f) could be excluded.

*Japan*. RENGO: (c) and (d); but non-uniformed employees should not be excluded. Clear job descriptions should be established, to deal with jobs that could belong to more than one category.

*Korea, Republic of*. (a) to (e), including prison inmates, and (f).

KEF: (a) to (e), including non-uniformed employees; (d), (e), including prison staff and inmates performing work; and (f).

FKTU: (c) uniformed personnel, (d) and (e) prison staff.

*Kuwait*. (g), (h), (i), (l) and (m).

*Myanmar*. (c), (d) and (e) prison staff.

*Portugal*. (a), (b), (d), (e), (h).

*Romania*. (c) to (f).

*Russian Federation*. (c), (d) except where civilian employees work, and (e) units and workplaces where military personnel and persons performing military service are serving, as well as premises where prisoners are held (except for places where civilian personnel and persons serving a court-imposed sentence work at an enterprise).

*Seychelles*. (c) to (f).

*Slovakia*. (c), (d) uniformed personnel in armed action and training, but not during normal work, i.e. repairing, testing, maintenance, etc., (f) while actively fighting fires.

*Sudan*. (c) to (f).

*Suriname*: (c) uniformed personnel only. A special internal (inspection) body might be more appropriate for military personnel.

*Switzerland*. Confederation of Swiss Trade Unions (SGB): No exceptions. The scope should in any case also include public transport services, notably railways.

*Syrian Arab Republic*. (c), (d), (e) both staff and inmates; and (f).

*Tunisia*. (a), (b), (c) both uniformed and civilian personnel, (d), (e) both staff and inmates, (f) to (j) including maritime and air transport.

*Turkey*. (c) uniformed personnel, and (d).

TISK: All workplaces in paragraph 2 could be left outside the scope of the instrument. All workplaces in subparagraph (n) should remain within the instrument as examples. Their definition as final and specific for member States should be made under Question 8.

*United Arab Emirates*. (a) to (f), (j), (k) and (l).

*United Kingdom*. TUC: Most of the sectors listed are already covered in the United Kingdom by either the HSE or local authorities inspectorates. Some clarification of the overlap between the enforcing authorities is required, but acceptance of the Convention would ensure that all areas of working life would be covered.

*United States*. (a) to (i). To the extent that exclusions from normal inspections/penalties were to be allowed, they should generally be limited to agencies engaged in "the administration of the State".

*Uruguay*. (c) to (f). All civil servants under statutory regulations should be excluded from the scope of the instrument and general conditions of work, since other public bodies are responsible for inspecting these workplaces. Any questions arising should refer only to safety and health.

***Should the instrument(s) provide for alternative inspection arrangements for any categories of workplaces thus excluded?*** **Qu. 7 (3)**

*Total number of replies: 39.*

*Affirmative: 21.* Algeria, Belarus, Benin, Bulgaria, Colombia, Cyprus, Cze Republic, Ethiopia, Indonesia, Italy, Lebanon, Morocco, Namibia, Peru, Portug Seychelles, Slovakia, Sudan, Suriname, United Arab Emirates, United States.

*Negative: 15.* Australia, Cuba, Egypt, Finland, Kuwait, Latvia, Myanma Netherlands, New Zealand, Nicaragua, Philippines, Romania, Syrian Arab Republ Tunisia, Uruguay.

*Other: 3.* Belgium, Canada, Germany.

*Algeria.* For those categories excluded, other inspection mechanisms should ha priority.

*Australia.* There should be access to a complaints procedure. In Australia, for instanc members of the armed services also had recourse to well-established redress-of-grievan procedures, including review by the Defence Ombudsman.
ACCI: No.

*Austria.* Yes.

*Belarus.* Yes, under certain conditions.

*Belgium.* Excluding certain categories of workplaces does not imply that there would be applicable regulations. Inspection mechanisms vary according to workplaces and subje matter.
CNT: Establishments in categories excluded, if not subject to an external supervisi service, should at least organize an internal control.

*Benin.* Persons employed in such workplaces need to be protected against the risks to whi they are exposed.

*Brazil.* CNT: Yes.

*Canada.* The Government propose to "transfer" Question 7, paragraph 3, to Question replacing Question 8, paragraph 2. Furthermore, it proposes to add after "inspecti arrangements" the words "or other means of ensuring labour protection". This would tal account of categories of workplaces, e.g. Question 7, paragraph 2 (c), armed forc (non-civilian personnel), for which a Member could apply a policy and programme to ensu compliance with appropriate labour standards, but does not consider a system of labo inspection appropriate because of security considerations or operational requirements.
PSA and CUPE: No.
CLC and CEP: No; different treatment would lead to more rules and regulations.

*Egypt.* EFTU: Yes.

*Germany.* Members availing themselves of the possibility afforded them in Question paragraph 2, should ensure that, in recognition of the aims of the instrument(s), the greate possible safety and health protection is assured.

*Indonesia.* Labour inspectors in Indonesia only have authority to conduct inspection workplaces of the private sector (non-governmental institutions). Inspections in governmenta including military, institutions are conducted by their own inspection units.

*Italy.* Other mechanisms needed to provide for inspection in these services. Exclusio should always be preceded by an analysis of the national and organizational system protection for the workers concerned and, where applicable, by prior consultation wi employers' and workers' representative organizations.
CONFCOMMERCIO: No, except on the assumption of adoption of an *ad hoc* instrume concerning specific sectors.
CIDA: Yes; in the cases indicated, inspection arrangements should be organized accordi to specific criteria and standards established by the competent ministry.

*Korea, Republic of.* FKTU: Yes.

*Lebanon.* Yes, such categories should have their own inspection arrangements.

*Morocco.* Yes, for categories (a), (c), (g), (h), (i), (j) and (n): customs.

*Namibia.* The instrument should lay down the guidelines and procedures for the arrangements of inspections at the specific categories of workplaces excluded.

*New Zealand.* NZCTU: Yes.

*Norway.* LO: Yes.

*Switzerland.* SGB: Yes, if exceptions were allowed in spite of the position expressed in the reply to Question 7, paragraph 2.

*Syrian Arab Republic.* As certain categories of workplaces are excluded from the scope of the instrument, the provisions for alternative inspection arrangements are invalid.

*Tunisia.* No. Their exclusion means that none of the provisions of the instrument would be applicable to them. This would not prevent Members from applying, as far as possible, inspection mechanisms suitable to these categories of workplaces.

*Turkey.* TISK: Yes.

*United Arab Emirates.* Yes. Such provision would be important to make the instrument flexible.

*United States.* Any such arrangements would have to be determined in accordance with national law and practice. All categories of workplaces should benefit from some form of protection against occupational safety and health hazards; however, this does not necessarily have to take the form of inspection by, and penalties from, central bodies such as the Occupational Safety and Health Administration (OSHA).
USCIB: No.

At first count, there would appear to be a clear majority of governments in favour of a generic exclusion of certain categories of workplaces from the future instrument(s), though an equally clear majority of employers' and workers' organizations are against it. However, a detailed breakdown of replies reveals a more complex picture. Only 28 of the governments in favour of adopting a Protocol are also in favour of the possibility of any form of a general exclusion of certain categories of workplaces as indicated in Question 7, paragraph 1. Just over half of all government replies to paragraph 1 (32 out of 57), in their answer to paragraph 2 favoured excluding the armed services from the scope of the Protocol, with fewer (27 out of 57) in favour of excluding the police and security services, and much fewer still in favour of excluding non-uniformed personnel in the armed services (16 out of 57). Twenty-four out of 57 replying governments were in favour of excluding work in prisons, whether by staff or inmates, or both. Thus, if the Protocol were to provide for any such generic exclusions at the time of its adoption by the Conference, this would in consequence eliminate such categories of workplaces once and for all from the scope of Convention No. 81 and most likely foreclose any possibility of their future inclusion. It would also no doubt be seen as regressive by quite a few Members which already apply the Convention or similar provisions to part or all of these categories of workplaces without any difficulties. On the other hand, the subsequent additional provisions on which views were invited in Questions 8 and 12 to 16 (namely to allow individual Members to exclude certain categories of workplaces and/or impose certain restrictions on labour inspection in their regard) would appear to give due recognition to the evident concerns expressed by those arguing for the total exclusion of one or

more categories of these workplaces from the scope of the Protocol, and in fa provide an equivalent solution.

A few countries proposed to exclude additional specific categories of workplac not listed in Question 7, paragraph 2, for example Belgium with regard to premis enjoying diplomatic status, Finland with regard to the border guard services, Sweden with regard to work on board warships. To a large extent, these concerns ca be resolved under the Proposals suggested in Question 8. Furthermore, a substanti majority of government replies to Question 8, paragraph 1, were in favour of th possibility of allowing individual Members to declare certain exclusions. This woul then clearly appear to be the preferred solution, as the respective approaches suggeste in Questions 7 and 8 are mutually exclusive. The Office, in consequence, does n propose that the Protocol provide for the generic exclusion of any category workplace from its scope of application, but rather open the possibility of specif exclusion by individual Members.

In answer to paragraph 3, a considerable number of governments were of th opinion that the instrument should provide for alternative inspection arrangements f any categories of workplaces excluded in the manner proposed in paragraph 2. Th need for such alternative arrangements was not originally envisaged as an element i the procedure on which views were invited in Question 8. A provision has therefo been introduced regarding alternative inspection arrangements for any categories workplaces excluded by individual Members under procedures proposed in tha Question. Such arrangements take account of the views expressed in reply t Question 7, paragraph 3 *(Article 2, paragraph 3).*

**Qu. 8 (1)** *Should a Member, at the time of ratification of a Protocol to Conventio No. 81, be permitted to exclude wholly or partly from its scope specifie categories of non-industrial and non-commercial workplaces if th application of the Convention to them would raise special problems of substantial nature?*

*Total number of replies: 56.*

*Affirmative: 44.* Algeria, Australia, Austria, Belarus, Belgium, Bulgaria Colombia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, Ethiopia, Germany Hungary, Italy, Republic of Korea, Kuwait, Lebanon, Lithuania, Republic o Moldova, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Peru, Philippines Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Spain, Sudan Suriname, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United States, Uruguay.

*Negative: 9.* Angola, Benin, Brazil, Denmark, Finland, Latvia, Netherlands Norway, United Kingdom.

*Other: 3.* Canada, Ireland, Sweden.

*Australia*. Yes, although the categories should be limited, as in Article 4, paragraph 1, of Convention No. 138 (Minimum Age).
ACCI: Yes.
ACTU: No.

*Austria*. BAK: The possibility of exclusions should not be limited to specific categories. However, it should be ensured through adequate measures that sufficient pressure is exerted on Members to extend the instrument to such categories in the foreseeable future. This could, for instance, be achieved by obliging member States to undertake, within a certain time-frame, all measures necessary to include these categories under the instrument(s). For the transition period, alternative inspection measures should be ensured.

*Benin*. Except for establishments indicated in reply to Question 7, paragraph 2, all others should come within the scope of the instrument(s).

*Brazil*. CNI and CNC: Yes.

*Canada*. The Government proposes to delete, in paragraph 1, "at the time of ratification of a Protocol to Convention No. 81", and replace "its scope" by "the scope of the Protocol". This would allow for changes in exclusions after ratification and would be in line with the flexibility afforded in this regard in Article 3, paragraph 1, of the Part-Time Work Convention, 1994 (No. 175). It would also be consistent with Question 9, paragraph 2.
PSA: No. Allowing Members to exclude wholly or partly from its scope specified categories of NCS sector workplaces would result in the proposed Protocol being Member-specific, at the cost of its universal application.
CUPE: No. It is difficult to justify the exclusions foreseen on the basis that "special problems of a substantive nature" could be claimed by Members but not demonstrated. Application should be universal.
CEP: No; to do so would allow any excuse for any exclusion.
CLC: No.

*Colombia*. Partial or total exclusion would be necessary in so far as the economic situation and political organization are different in each country.
CGTD: No.

*Cyprus*. Yes, for reasons of flexibility.
PEO: Other exclusions, if so wished by a Member, could be permitted if the application of the Convention would raise special problems of a substantial nature.

*Denmark*. No. See, however, the reply to Question 7, paragraph 2.
LO: No; and furthermore, Article 29, paragraph 1, of Convention No. 81 has become obsolete.

*Finland*. The limitations mentioned in Question 7, paragraph 2, are sufficient.

*Germany*. DGB: No.

*Greece*. GCGW: See reply to Question 7.

*Ireland*. The possibility for Members to exclude specified categories of workplaces from the scope of the instrument, where special problems of a substantial nature would arise, could be useful in certain circumstances, but any such exclusions should perhaps be of limited duration so as to enable appropriate transitional arrangements to be made on a planned, phased basis. Such facility could help to maintain the overall thrust and spirit of the instrument where full compliance might not otherwise be possible from the outset.

*Japan*. RENGO: See reply to Question 7.

*Korea, Republic of*. FKTU: If special problems arose in the application of the Convention, a Member should be permitted to opt for certain flexibility clauses.

*Morocco*. In case the exclusion of categories specified in Question 7, paragraph 2, is not permitted, a Member should be allowed, at the time of ratification of the Protocol, to exclude these categories from its scope.

*Netherlands.* See answer to Questions 5 and 7, paragraph 1.
FNV: See reply to Question 7, paragraph 1.

*New Zealand.* See also answer to Question 7.
NZCTU: Yes. See also comments to Question 8, paragraph 3, and Question 9.

*Norway.* No. Based on the answer to Question 7, which provides for some flexibility exclusion of entire sectors does not seem appropriate.

*Spain.* Yes. The labour inspectorate should be empowered, under its own authority, to ensure application in every case.

*Sweden.* A possibility of this kind would no doubt have to be allowed for. The Swedish ILO Committee found it hard to determine which exclusions should be permitted, but it should not be possible for all categories to be excluded.

*Switzerland.* CNG: Ratification *à la carte* was acceptable in case of substantial difficulties for certain sectors, on condition that exclusion of any such category of the NCS sector be subject to consultation with the social partners, and that labour protection in that category is nevertheless adequately assured.
SGB: No.

*Syrian Arab Republic.* CoI: No.

*Turkey.* TÜRK-IS: No.

*United Kingdom.* No Member should be permitted to exclude wholly or partly from the scope of the instrument(s) specified categories of non-industrial and non-commercial workplaces. The exemptions which operate in the United Kingdom do not concern workplaces but have been made only in special circumstances, e.g. to preserve national security or to enable flexibility in the operations of the public emergency services.
TUC: This question is worded too open-endedly. What could be called a special problem? Or what is a problem of a substantial nature? The acceptance of exclusion would enable some countries to avoid including many aspects of working life within the scope of the instrument(s). It could also enable the government to withdraw certain areas presently covered by UK legislation, particularly in the light of policies of deregulation and "lifting the burden from employers" of health and safety legislation.

*United States.* Yes. This would provide some flexibility in the Protocol and accordingly increase the possibility of a widely ratifiable instrument.
USCIB: No. There is no similar provision applicable to the private sector under Convention No. 81. As addressed in Questions 12-15, narrow differences in application might be permitted.

**Qu. 8 (2)** *If so, with regard to which categories listed in question 7 (2) should such exclusion be permitted?*

*Total number of replies: 46.*

*Algeria.* Refer to the answer to Question 7, paragraph 2.

*Australia.* Categories for exclusion should not be listed as this could create problems for new forms of work, or work covered in other Conventions.
ACCI: (c) civilian employees only; (d).

*Austria.* All categories of workplaces falling within the scope of the instrument(s).

*Belarus.* Any category unrelated to industry or commerce.

*Belgium*. See the answer to Question 7, paragraph 2, notably (n).

*Brazil*. CNI: (c) to (f).
CNC: See answer to Question 8, paragraph 1.

*Bulgaria*. All categories mentioned in the reply to Question 7, paragraph 2.

*Canada*. See answer to Question 7, paragraphs 2 and 3.
PSA: Not applicable.

*Colombia*. (c) and (d).
CGTD: None.

*Cuba*. (c), (d), (e) and (f).

*Cyprus*. See reply to Question 7, paragraph 2; provided that alternative inspection arrangements are secured.

*Czech Republic*. Certainly (c) and (d). Possibly also certain personnel in categories (a), (e) and (f).

*Ecuador*. (a), (c), (d) and (e), and partially (g), (h) and (i).

*Egypt*. See reply to Question 7, paragraph 2.

*Ethiopia*. (a), (b), (c) and (e).

*Finland*. See answer to Question 8, paragraph 1.

*Germany*. No selection of categories according to Question 7, paragraph 2.

*Hungary*. All.

*Ireland*. It depends on the particular circumstances in each member State.

*Italy*. Reasons should be given related to the above-mentioned criteria (Question 7) of public order and national security and specifying in what way the rights of workers to protection in such exempted sectors would be guaranteed.
CONFCOMMERCIO: Possible exclusions should be made in the light of specific situations reviewed periodically.
CIDA: see reply to Question 7, paragraph 2.

*Korea, Republic of*. Each Member should be allowed to decide independently.
FKTU: (c), (d) and (e).

*Kuwait*. See reply to Question 7, paragraph 2.

*Lebanon*. It is preferable not to determine this in advance; it should be left to Members, when ratifying, according to their requirements.

*Lithuania*. (c) uniformed personnel; (d) and (e).

*Moldova Republic of*. (c), including civilian employees, (d), (e) and (f).

*Myanmar*. The same as for Question 7, paragraph 2.

*Namibia*. (c) and (d), uniformed personnel only in both categories.

*Netherlands*. None. See answers to Questions 5 and 7, paragraph 1.

*New Zealand*. NZCTU: It would depend on the special problems raised.
NZEF: Which categories are to be excluded is a matter for individual countries.

*Nicaragua*. (h), (j) and (k).

*Peru*. (c) and (d), both uniformed and civilian personnel.

*Philippines*. (c) uniformed personnel only.

*Portugal*. See reply to Question 7, paragraph 2.
CIP: (c), (d), (e) and (h).

*Romania*. (c) to (f).

*Russian Federation.* (c), (d), and (e).

*Seychelles.* (c) to (f).

*Slovakia.* Yes.

*Sudan.* Same reply as for Question 7, paragraph 2.

*Suriname.* (c) to (f).

*Switzerland.* (c) uniformed personnel only.
SGB: None.

*Syrian Arab Republic.* The same categories as in reply to Question 7, paragraph 2.

*Tunisia.* The same exclusions as in reply to Question 7, paragraph 2.

*Turkey.* Yes. See also Question 7, paragraph 2.
TISK: To be carried out by the Governments as specified in Question 8, paragraph 3.

*United Arab Emirates.* (a) to (e).

*United States.* For Members to decide in line with national law and practice.
USCIB: (c) only when national security, narrowly defined, is at stake.

*Uruguay.* (c) to (f).

**Qu. 8 (3)** *Should any such exclusion be subject to prior consultation with the representatives of employers and workers concerned, and/or the most representative organizations of employers and workers?*

*Total number of replies: 44.*

*Affirmative: 39.* Australia, Austria, Belarus, Belgium, Bulgaria, Canada, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, Ethiopia, Finland, Germany, Italy, Hungary, Ireland, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Myanmar, Namibia, Nicaragua, Philippines, Poland, Portugal, Romania, Seychelles, Slovakia, Sudan, Suriname, Sweden, Syrian Arab Republic of, Tunisia, Turkey, United Arab Emirates, Uruguay.

*Negative: 4.* Algeria, Netherlands, Peru, United States.

*Other: 1.* Colombia.

*Brazil.* CNC: See answer to Question 8, paragraph 1.
CNI: No.

*Canada.* PSA: Not applicable.

*Colombia.* With regard to the requirements of the inspection system, it would be advisable to hold prior consultations with the representatives of employers and workers of the categories that should be excluded.
CGTD: There should be consultation, but the Confederation nevertheless insists that there should be no exclusions.

*Cyprus.* Yes, except in the case of uniformed personnel in the armed forces, the police and fire brigade, where no reasons should have to be given.
PEO: Prior consultations with representatives of employers and workers concerned.

*Greece*. GCGW: Yes.

*Italy*. CIDA: No.

*Japan*. RENGO: Yes.

*Korea, Republic of*. Instead of mandatory consultation, it would be more desirable for the government to decide whether to respect the views of the most representative organizations of employers and workers.
FKTU: Yes, with representatives of employers and workers concerned.

*Lebanon*. Yes, in line with Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

*Lithuania*. Consultation with representatives of employers and workers.

*Namibia*. Yes, in accordance with Convention No. 144.

*Netherlands*. See answers to Questions 5 and 7, paragraph 1.
FNV: Yes.

*New Zealand*. NZEF: Yes. Prior consultation with employers and employers' organizations would help in the furtherance of open government and would be of assistance in identifying in advance any problems or difficulties which might otherwise arise.
NZCTU: Yes.

*Philippines*. With the representatives of employees and heads of offices.

*Portugal*. CIP: This is essential.

*Seychelles*. Yes, with the representatives of employers and workers.

*Switzerland*. SGB: See reply to Question 7, paragraph 3.

*Tunisia*. Yes. However, consultation should be limited to categories of workplaces where such organizations are active. In many countries, members of the armed forces or internal security cannot form trade unions.

*United States*. Exclusions of this type in the US are based on statutory, not administrative authority; therefore, no mechanism exists for the OSHA to consult with employer and worker representatives; these could, however, participate through the legislative process.
USCIB: Yes.

Over three-quarters of the governments in favour of adopting a new instrument were also in favour of allowing Members, at the time of ratification of the instrument, to take advantage of the exclusion procedure provided for in paragraph 1.

Cyprus and the United States believed that this would provide flexibility and accordingly increase the prospect of ratification. This view was also shared by certain employers' and workers' organizations. Sweden and Switzerland found selective exclusions acceptable, provided that not all categories are excluded in this manner, that there is proper consultation with the social partners and that an adequate level of labour protection is assured. Norway and the United Kingdom were opposed to any exclusion, the latter because exemptions should not concern workplaces, but be allowed only in special circumstances e.g. to protect national security interests.

Ireland was of the opinion that such a possibility could be useful in certain circumstances, but any exclusion should be subject to a specific time-limit to allow for appropriate, planned and phased transitional arrangements. Australia was in favour of such exclusions, but thought that categories of workplaces so excluded should be limited, as in Article 4, paragraph 1, of the Minimum Age Convention, 1973 (No. 138). Employers and workers were divided, with some of those rejecting the concept of exclusions being of the opinion that this would result in the proposed

Protocol being Member-specific, at the cost of its universal application. The Offi proposes to follow the majority opinion by allowing exclusions in principle, b limiting them to specified categories of workplaces as suggested in the analysis replies to paragraph 2, if the application of Convention No. 81 to those workplac would raise special problems of a substantial nature *(Article 2, paragraph 1)*. In ord to maintain consistency with Article 25, paragraphs 1 and 2, of Convention No. 81, proposes that any Member which ratifies the Protocol may by a declaration append to its instrument of ratification indicate the categories of workplaces so exclud *(Article 2, paragraph 1)*, and at any time cancel such a declaration by a subseque declaration *(Article 2, paragraph 4)*.

The analysis of answers to paragraph 2, which refers to Question 7, paragraph reveals the following: several governments, for example Austria, Germany and t Netherlands, did not accept the need for any exclusions. Some, like Ireland, Lebano Korea and the United States, wished to leave this matter to national law and practic Of the majority of governments opting for certain exclusions, 31 wished to have t possibility of excluding workplaces in the armed services at the time of ratifying t Protocol; the same number advocated such a possibility with regard to the police a other public security services; and 27 desired that possibility also in respect of pris services. In each case, this represents slightly more or slightly less than half t Members responding to paragraph 1. There is considerably less support for any oth category referred to in paragraph 2. The next in line, fire brigades and other resc services, attracted less than a third of affirmative replies from Members respondi (17); and national (federal) government administrative services, just about a quart (14); all other categories were clearly and sometimes significantly below t foregoing. Several of the countries wishing to exclude workplaces of the fire servic in fact expressed concern only for emergency operations on site, while some Membe wished to see central government administrations excluded only for reasons confidentiality or state security. These aspects are, however, fully taken in consideration in the text proposed in respect of Questions 14 and 16. The Offi therefore proposes that the possibility of exclusions by individual Members at the tim of ratification should be retained with regard to the armed services (military or civ ilian personnel, or both); the police and other public security services; and pris services (prison staff or inmates when performing work, or both) *(Article paragraph 1)*.

Two-thirds of the responding governments were in favour of prior consultation o the issue of any such exclusion, but they were divided on whether this should tak place with the representatives of employers and workers concerned, or their mos representative organizations. Several governments proposed that such consultatio should take place in accordance with the Tripartite Consultation (International Labou Standards) Convention, 1976 (No. 144). Therefore, while retaining the principle consultation in such cases, the Proposed Protocol leaves open to Members whic procedure to adopt *(Article 2, paragraph 2)*.

***Do you consider that a Member which avails itself of the possibility afforded in question 8 should, in its first report under article 22 of the Constitution of the ILO, indicate for the categories of workplaces thus excluded the reasons for the exclusion and any alternative inspection arrangements which may be applicable to them?*** **Qu. 9 (1)**

*Total number of replies: 53.*

*Affirmative: 37.* Algeria, Australia, Austria, Belgium, Benin, Bulgaria, Czech Republic, Ecuador, Ethiopia, Finland, Hungary, Ireland, Italy, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Myanmar, Namibia, New Zealand, Norway, Poland, Portugal, Russian Federation, Seychelles, Slovakia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United Kingdom, Uruguay.

*Negative: 10.* Colombia, Cuba, Cyprus, Egypt, Morocco, Netherlands, Nicaragua, Philippines, Romania, Suriname.

*Other: 6.* Belarus, Brazil, Canada, Republic of Korea, Peru, United States.

*Algeria.* Yes. The first report should contain argumentation concerning the reasons for exclusion of certain categories of workplaces.

*Australia.* ACTU: If some exclusion were granted (which the Community and Public Sector Union, CPSU, does not consider as appropriate) there would be a clear need for that to be limited, fully justified and an alternative inspection arrangement applied.

*Austria.* Yes. Exclusions should be made as difficult as possible.

*Belarus.* Optional.

*Brazil.* See reply to Question 8, paragraph 1.
CNI: Yes.

*Canada.* The Government proposes amendments to this Question as follows: replace "its first report" by "its reports", in line with Article 3, paragraph 2, of Convention No. 175 (Part-Time Work), for reasons explained in the reply to Question 8. After "alternative inspection arrangements", add the words "or other means of ensuring labour protection" for reasons stated under Question 7, paragraph 3.
PSA and CUPE: Not applicable.

*Cyprus.* No, as this would eliminate the flexibility under Question 8, paragraph 1.

*Germany.* DGB: See reply to Question 8.

*Greece.* GCGW: Yes.

*Italy.* CONFCOMMERCIO: It does not seem necessary to indicate alternative inspection arrangements.

*Japan.* RENGO: Yes.

*Korea, Republic of.* Categories of workplaces: yes; reasons for exclusion: no.

*Namibia.* The report should indicate the categories of workplaces excluded as well as the arrangements for inspections to be carried out in them.

*Netherlands.* See answers to Questions 5 and 7, paragraph 1.
FNV: Yes.

*New Zealand.* NZEF: Reports under article 22 usually require information on reasons for any exclusion to be provided.

*Peru.* The first report should include a list of workplaces excluded and the reasons for exclusion.

*Spain.* See reply to Question 8, paragraph 1.

*Syrian Arab Republic.* Yes, provided that the Member indicates the reasons for exclusion, without having to indicate alternative inspection arrangements.
CoI: No.

*Turkey.* TÜRK-IS: No.

*United Kingdom.* TUC: If exclusions are permitted from the scope of the Convention, th the reasons for the exclusions and any alternative inspection arrangements should be repor by the Members, and in subsequent reports they should set out all measures taken with a view extending gradually the provisions of the instruments to the workplaces concerned.

*United States.* Undecided. The discussion of this Question would enable Members to ma an appropriate choice.
USCIB: Yes, but the possible exclusions should be closely circumscribed.

**Qu. 9 (2)** *If so, should it describe in subsequent reports all measures taken with view to extend gradually the provisions of the instrument(s) to t workplaces concerned?*

*Total number of replies: 40.*

*Affirmative: 28.* Australia, Benin, Bulgaria, Colombia, Czech Republic, Ethiopi Finland, Hungary, Ireland, Republic of Korea, Latvia, Lithuania, Lebanon, Republ of Moldova, Myanmar, Namibia, Peru, Poland, Portugal, Russian Federatio Seychelles, Slovakia, Sudan, Sweden, Switzerland, Tunisia, Turkey, United Ara Emirates.

*Negative: 8.* Egypt, Kuwait, Netherlands, New Zealand, Philippines, Syrian Ara Republic, United Kingdom, Uruguay.

*Other: 4.* Austria, Belarus, Belgium, Canada.

*Australia.* Yes, where possible.
ACCI: Yes.

*Austria.* It should be left to each Member, since this could concern categories whic because of particular problems of considerable importance, might never be include Exceptions under paragraph 1 should, from the start, be made so difficult as to be granted on where, and as long as, an undoubted need for them exists.

*Belarus.* Optional.

*Belgium.* It depends on the type of workplace.

*Brazil.* CNC: See answer to Question 8, paragraph 1.
CNI: Yes.

*Canada.* Proposed changes in the wording of the question: replace "subsequent reports by "such reports"; change "measures taken" to "measures which may have been taken" delete the word "gradually". This would allow ILO supervisory bodies to take account of ne developments without implying, as Question 9, paragraph 2, now does, a requirement fo

Members to extend the Protocol progressively to categories which they had excluded from its application. That would be at cross purposes with the flexibility afforded by Question 8.
PSA and CUPE: Not applicable.

*Greece.* GCGW: Yes.

*Italy.* CIDA: Yes.
CONFCOMMERCIO: No.

*Japan.* RENGO: Yes.

*Korea, Republic of.* Yes, but only if such an extension was required.

*Lithuania.* It should describe ways in which the requirements of the future instrument(s) would be applied to structures so excluded.

*Netherlands.* See answers to Questions 5 and 7, paragraph 1.
FNV: Yes, this would stimulate ongoing improvements.

*New Zealand.* No. While this is not relevant for New Zealand, it could be an obstacle to ratification for other countries required to commit themselves to such gradual extension.
NZCTU: The NZCTU has some difficulty with the Government's comments. These would appear to imply that the possible existence of Members which at present find difficulty in complying fully with the general standard is a reason for excluding any requirement for such Members to take steps to improve compliance. The NZCTU does not agree that this is a compelling argument for excluding such a requirement.
NZEF: No. It would be contradictory to allow an exclusion and yet require a country to work towards extending the scope of an instrument's coverage.

*United Kingdom.* Confederation of British Industry (CBI): Yes.
TUC: Yes.

*United States.* USCIB: Yes.

More than half of all governments replied in the affirmative and only a few stated that this should be optional. Cyprus feared that such an obligation would eliminate the flexibility introduced under Question 8, while Colombia and Republic of Korea were in favour of members specifying the categories of workplaces thus excluded, but not the reasons for doing so. Some Members did not wish to have to report on alternative inspection arrangements, whereas Canada considered that all the obligations should be reported on in all subsequent reports required under the ILO Constitution.

The Office proposes to retain the obligation to report on the reasons for any exclusion, but to confine it to the Members' next report under article 22 of the Constitution on Convention No. 81 following ratification of the Protocol *(Article 2, paragraph 3, first sentence)*. The text of the Protocol also retains proposals to encourage Members to provide for alternative inspection arrangements, but as this is not a binding obligation, the requirement to report on such alternative arrangements has been dropped.

Furthermore, a substantial number of member States and a majority of employers' or workers' organizations were in favour of adopting an obligation as envisaged in Question 9, paragraph 2, and only eight governments were against such an obligation, even though New Zealand, for instance, believed this could be an obstacle to ratification. Belgium believed that it should depend on the type of workplace excluded, and certain others felt that this should be optional. The Office, in accordance with the clear majority, and in particular in order to respect conformity with the

existing procedures prescribed in Article 25, paragraph 3, of Convention No. 81, has retained this provision in the Proposed Protocol *(Article 2, paragraph 3, second sentence).*

**Qu. 10** *Have you any other proposals regarding the scope of the proposed instrument(s)?*

*Total number of replies: 52.*

*Affirmative: 12.* Algeria, Austria, Colombia, Denmark, Egypt, Ethiopia, Italy, Namibia, Philippines, Sweden, Switzerland, Tunisia.

*Negative: 40.* Australia, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Cuba, Cyprus, Czech Republic, Ecuador, Finland, Germany, Hungary, Indonesia, Ireland, Republic of Korea, Kuwait, Latvia, Lithuania, Republic of Moldova, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Sudan, Suriname, Syrian Arab Republic, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay.

*Algeria.* The list of exclusions should be restrictive, to limit workplaces or activities outside the scope of labour inspection.

*Austria.* See comments to Questions 7 and 8.

*Canada.* CEP: The scope should be as broad and inclusive as possible and not subject to arbitrary exemptions.

*Colombia.* These mechanisms should be as similar as possible to general regulations in order to avoid a proliferation of special provisions.

*Denmark.* Off-shore installations can only be inspected by means of helicopters. This puts certain limits to inspection. The Danish authorities could have restricted inspection in line with Article 16 or Article 29, paragraph 1, of Convention No. 81. Instead, a duty has been imposed upon operators to establish an internal control system and submit written reports to the authorities. The traditional inspection system has in this way been replaced by an internal inspection system combined with spot checks. The Federation of Danish Trade Unions has accepted this system.

*Egypt.* The Government proposed that the scope include all non-industrial and non-commercial workplaces not governed by special laws.

*Ethiopia.* The instrument should be formulated so as to make it possible to consider expansion of its scope at regular intervals, to give recognition to developments in this sector.

*Italy.* Account might also be taken of the explicit extension of the Protocol to work in sport, to members of cooperatives and shareholders in partnership companies.

*Namibia.* Consideration could be given to inspection of adherence to basic health and social standards by voluntary organizations.

*Philippines.* Emphasis should be on practicability of application by a Member. In the Philippines, applicability would be considered only in regard of workplaces excluded under Question 7, paragraph 2 (c), if the new instrument were to include them.

*Portugal.* No, assuming inclusion in the instrument of the proposal to Question 5.

*Sweden.* The Swedish Work Environment Ordinance provides as follows: "In the case of work done in the home, inspection visits are only to be paid at the request of the employer or employee concerned or if there is some other special reason for them. The same shall apply concerning work done by a person carrying on business without employees or employing only a member or members of his family". Supervisory activities could thus be restricted out of consideration for private, personal circumstances.

*Switzerland.* Several categories of non-commercial services mentioned in Question 7 employ persons whose status cannot be equated with that of a worker, e.g. occasional volunteers (fire services, charities, cultural and recreational services). Their activities are themselves sometimes considered as recreational. Therefore, the scope of supervision of an obligatory inspection system should be narrowly defined, or else limited to persons employed against remuneration by such services, as well as to persons regularly employed.

*Tunisia.* The judicial services should be added in Question 7, paragraph 2, to the list of categories of workplaces subject to exclusion in view of their special nature.

*United Kingdom.* CBI: No. Whilst the Confederation would support an extension of Convention No. 81 to activities in the non-commercial services sector, it would not support a stricter, wider instrument for these activities.

*United States.* USCIB: See answers to Questions 1 and 24.

Over two-thirds of Members replied in the negative to this question. Some countries, such as Austria, Namibia and Switzerland, mentioned certain voluntary organizations, but whereas Namibia wished to have them included, Austria and Switzerland wanted them excluded from the scope of the Protocol. Therefore, with reference to this Question, no specific Point is retained in the Proposed Protocol.

*Should the instrument(s) provide that any measures for ensuring their implementation be prescribed by national laws or regulations?* **Qu. 11 (1)**

*Total number of replies: 57.*

*Affirmative: 51.* Algeria, Angola, Australia, Austria, Belarus, Belgium, Benin, Colombia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Ethiopia, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Seychelles, Slovakia, Spain, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United States, Uruguay.

*Negative: 4.* Brazil, Bulgaria, Cuba, Netherlands.

*Other: 2.* Canada, United Kingdom.

*Angola.* Yes, for legal effectiveness.

*Benin.* Persons charged with ensuring the application of the instrument(s) should be able to avail themselves of such legislation, if necessary.

*Brazil.* CNI: Yes.

*Canada.* The Government proposed to add after "national laws and regulations" the words "or any other means in accordance with national conditions and practice". This would make the provision sufficiently flexible to apply to a broad range of circumstances and practices in different member States, e.g. where labour inspection in NCS subsectors takes place under guidelines, directives or collective agreements, and it would enhance the ratification potential.

CLC: Yes.

CEP: Yes.

PSA: Or any other means consistent with national practices.

CUPE: Also by other means, such as provincial laws.

*Colombia.* Yes, in order to avoid controversy over their application.

*Greece.* GCGW: Yes.

*Japan.* RENGO: YES.

*Korea, Republic of.* Yes, but recommendation would be better than prescription.

*Lebanon.* Yes, according to the Constitution and national laws in each country.

*Namibia.* The instrument(s) should provide proper guidelines to assist Members in ensuring implementation by national laws.

*Netherlands.* No. It was not mentioned in Convention No. 81 for industry and commerce either. No differences should be introduced between these and the NCS sector.

*New Zealand.* In addition, it should be possible to implement some provisions through administrative arrangements, where appropriate.

*Philippines.* Yes, for the instrument to be effective.

*Spain.* See reply to Question 8, paragraph 1.

*Switzerland.* CNG: More room for manoeuvre should be left to the social partners and the Cantons, within the limits of the requirements laid down by Convention No. 81.

*United Kingdom.* This should be a matter for Members to decide.

CBI: This should be carried out according to national law and practice.

TUC: Without such adoption into national law and practice, the Convention would become meaningless.

**Qu. 11 (2)** *If so, should the instrument(s) provide that measures taken to give effect to them be drawn up in consultation with representatives of the employers and workers concerned and/or the most representative organizations of employers and workers?*

*Total number of replies: 49.*

*Affirmative: 44.* Angola, Australia, Austria, Belarus, Benin, Canada, Colombia, Czech Republic, Ecuador, Egypt, Ethiopia, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Morocco, Myanmar, Namibia, Nicaragua, Norway, Peru, Philippines, Poland, Portugal,

Romania, Seychelles, Slovakia, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United States, Uruguay.

*Negative: 3.* Brazil, Netherlands, New Zealand.

*Other: 2.* Republic of Korea, Russian Federation.

*Belgium.* Yes. But given the diversity of the sectors concerned, obligatory consultation should be limited to the most representative organizations of employers and workers.

*Brazil.* See reply to Question 11, paragraph 1.
CNI: Yes.

*Canada.* CUPE: Yes, with the most representative organizations of employers and workers in the NCS sector.

*Greece.* GCGW: Yes.

*Japan.* RENGO: Yes.

*Korea, Republic of.* Regarding the exclusion of specific sectors, it would be desirable for governments to decide, respecting the views of the most representative organizations of employers and workers.
KFTU: Yes.

*Lithuania.* The most representative employers' and workers' organizations should be consulted in the process of implementation.

*Morocco.* With the most representative organizations of employers and workers.

*Namibia.* With representatives of employers and employees concerned.

*Netherlands.* See reply to paragraph 1.
FNV: Yes, if a majority was in favour of the proposal in Question 11, paragraph 1.

*New Zealand.* No. Convention No. 81 does not contain an Article along these lines, and no such Article should be included in any new instrument. The normal legislative process in New Zealand involves consultation with interested organizations (including representatives of employers and workers). There are, however, no separate formal arrangements for involving representatives of employers and workers in drawing up employment legislation. If the new instrument included an Article along these lines, this could be an obstacle to ratification by New Zealand.
NZCTU: The NZCTU agreed with the proposed provision and noted that this conformed to the concept of a social partnership between governments and representative organizations of workers and employers that underpinned the ILO. The NZCTU supported this concept.
NZEF: Yes.

*Russian Federation.* Thr drafting and adoption of such legislation should conform to established procedure in member States for drafting and approving laws and regulations.

*Seychelles.* Yes, with the most representative employers and workers.

*Switzerland.* Yes, provided consultation with the social partners could take place in the framework of established procedures for the elaboration of national legislation.

*United Kingdom.* TUC: Yes, in consultation with the employees through their independent trade unions, and organizations representative of employers.

Almost all countries in favour of adopting a new instrument replied in the affirmative to this question, for various reasons. Some, such as the United Kingdom, believed this should be for member States to decide. Some believed this should be optional; others, such as Canada and New Zealand, held the view that besides national laws and regulations, any other means in accordance with national conditions and

practice should be included. Switzerland felt that more flexibility should be given to the social partners and the Cantons within the limits of exigencies formulated by Convention No. 81, whereas the Netherlands rejected such a requirement on the grounds that it was not contained in the Convention, and no differences should be introduced between industry and commerce on the one hand, and the NCS sector on the other.

The Office again follows the majority view, but in order to take account of such special conditions as may exist in federal States, proposes to alter the wording in its text to also allow for any other means in accordance with national practice *(Article 3, paragraph 1)*.

A majority also replied in the affirmative to paragraph 2. As to the question whether such consultation should take place with representatives of the workers concerned or with the most representative employers' and workers' organizations, no clear pattern emerged from the replies. The Office therefore proposes a text which gives due recognition to the replies received *(Article 3, paragraph 2)*.

## IV. Additional provisions

**Qu. 12 (1)** *Should the instrument(s) provide that a Member may make special arrangements for the inspection of workplaces in the armed services, if they fall within their scope?*

*Total number of replies: 55.*

*Affirmative: 33.* Angola, Australia, Austria, Belarus, Benin, Bulgaria, Cyprus, Czech Republic, Ethiopia, Finland, Hungary, Indonesia, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Myanmar, New Zealand, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Russian Federation, Slovakia, Suriname, Sweden, Switzerland, Tunisia, Turkey, United Kingdom.

*Negative: 17.* Algeria, Brazil, Colombia, Cuba, Denmark, Ecuador, Egypt, Germany, Republic of Korea, Kuwait, Morocco, Netherlands, Romania, Seychelles, Spain, Syrian Arab Republic, United Arab Emirates.

*Other: 5.* Belgium, Canada, Lebanon, Namibia, United States.

*Algeria.* The armed forces should be specifically excluded from the scope of intervention of labour inspection.

*Angola.* Yes, bearing in mind the special nature of the armed services.

*Australia.* Yes, although Australia's preferred position is that military personnel should be excluded from the scope of the Protocol.

ACCI: If all workplaces are to be included there could be some provision for special arrangements to apply to areas involving safety or national security. This could satisfy concerns which might otherwise be addressed by exclusion.

*Austria.* BAK: In principle, with regard to Questions 12 to 18, there is no need for exceptions. Special arrangements might be considered only in respect of the inspection of workplaces in the police services, in particular relating to active police or security activities, and

for fire brigades. But by no means should the powers of inspectors be qualitatively limited, nor inspections generally prohibited.

*Belgium.* See answer to Question 7. Control of workplaces of the armed services could concern only workers not employed by the public authority.

*Brazil.* See the reply to Question 7.
CNC: See reply to Questions 7 and 8.

*Bulgaria.* Yes, workplaces where civilian personnel are working.

*Canada.* The Government proposes to replace the words "if they fall within their scope" by "where they have not been excluded under Question 8". This would be consistent with the suggested changes to Questions 7 and 8.
CLC: Yes.
CEP: Yes.
PSA: See answer to Question 7 paragraph 2 (n).
CUPE: No. The goal of the instruments should be full application of labour inspection without special arrangements.

*Colombia.* CGTD: Yes.

*Cyprus.* Yes. But only for civilian personnel; (uniformed personnel should be excluded from the scope of the instrument).

*Denmark.* See reply to Question 7, paragraph 2 (c).

*Finland.* With regard to Finnish legislation, special arrangements are not necessary.

*France.* CFDT: Yes.

*Greece.* GCGW: In modern, democratic societies the armed services should not keep issues concerning health, safety and application of labour standards secret.

*Japan.* RENGO: Yes.

*Korea, Republic of.* In view of the particular situation, inspection cannot be considered.

*Lebanon.* The Government suggests excluding them, but should they be included within the scope of the proposed instrument, it could agree to paragraphs (1), (2) and (3).

*Namibia.* Any Member wishing to include the armed forces and police should make special arrangements for inspections to be carried out in these categories of workplaces. Arrangements should be left in the hands of member States concerned.

*Netherlands.* See reply to Question 7.
FNV: Yes, if the aim is to achieve as far as possible protection equivalent to "normal" workplaces.

*New Zealand.* NZCTU: Yes, provided that the instruments makes it clear that the standard of inspection remains comparable with that of its general provisions.

*Spain.* The armed services are excluded owing to the nature of their activities and the relation between their members and the administration. With regard to the exceptions and inspection systems, workers not subject to labour relations should be excluded until EU Directive 89/391/EEC has been transposed.

*Suriname.* Yes. Special arrangements are necessary because all workers are entitled to the same degree of protection in terms of health, safety and conditions of work as those in industrial and commercial workplaces.

*Sweden.* Internal rules for supervisory activities by the Labour Inspectorate within the armed forces have been issued in 1979. These apply to various secrecy aspects. Thus, Swedish handling routines in this sector allow restrictions of the kind proposed in paragraph 2, (a) to (d).

*Switzerland.* SGB: No, not if the term "special arrangements" could also imply weaker regulations.

*Syrian Arab Republic.* See reply to Question. 7, paragraph 2. The armed forces should be excluded.
CoI: Yes.

*Turkey.* TISK: Positive in regard of Questions 12 to 19. These workplaces could be left outside the scope of the instrument in accordance with Question 7.

*United Arab Emirates.* Should be excluded from the provisions or the instrument.

*United States.* Should be left to national law and practice.
USCIB: Yes.

**Qu. 12 (2)** *If so, should such arrangements permit any of the following limitations on the powers of labour inspectors as provided in Article of Convention No. 81:*

*(a) a restriction of entry to inspectors having appropriate security clearance?*

*(b) inspection only by appointment?*

*(c) restriction on the requirement to produce documents?*

*(d) the retention of confidential documents on the premises?*

*(e) restriction on the taking and analysis of samples of materials and substances?*

*(f) the prohibition of inspection during manoeuvres or exercises?*

*(g) the prohibition of inspection of front-line or active service units?*

*(h) the restriction or prohibition of inspection during declared periods of tension? (If so, please specify whether a restriction or a prohibition.)*

*(i) special provisions in respect of the transport of explosives and armaments?*

*(j) other limitations? (If so, please specify which.)*

*Total number of replies: 42.*

*Affirmative: 33.* Angola, Australia, Austria, Belarus, Benin, Brazil, Bulgaria, Canada, Cyprus, Ethiopia, Germany, Hungary, Indonesia, Ireland, Italy, Lithuania, Republic of Moldova, Myanmar, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Russia, Slovakia, Sudan, Suriname, Sweden, Switzerland, Tunisia, Turkey, United Kingdom.

*Negative: 4.* Algeria, Egypt, Finland, Kuwait.

*Other: 5.* Belgium, Czech Republic, New Zealand, Seychelles, United States.

*Algeria.* See answer to paragraph 1.

*Angola.* Yes.

*Australia.* Given the often tense, dangerous and confidential nature of activities in the armed forces, limitations on all aspects of any inspection should be provided.
ACCI: yes, (a) to (i); (h) restriction.
ACTU: (d), (f), (g), (h) and (i).

*Austria.* Yes, all. As regards (a), it should be considered whether such security clearance of civil servants would not be considered discriminatory.

*Belarus.* (b), (d) to (g); (h) restriction.

*Belgium.* See answer to paragraph 1. (a) yes. However, the situation is different concerning the working environment (occupational safety, hygiene and medicine). Here, the armed forces are subject to the same regulations as other sectors. But they have their own safety and health inspection services. It should be ensured that these have the same rights, duties and powers as laid down in Convention No. 81.

*Benin.* Yes, (a) to (i); (h) prohibition.

*Brazil.* CNC: See replies to Questions 7 and 8.

*Bulgaria.* Yes, (b), (d), (f), (g) and (h): restriction only. No other limitations should be permitted.

*Canada.* Yes, (a) to (i); (h) prohibition.
CLC and CEP: yes, (a), (c), (d) and (i).
PSA: Not applicable.

*Colombia.* (CGTD): Labour inspection should not be involved in any of the categories specified. It does not have sufficient powers as it is.

*Cyprus.* Yes, all (in respect of civilian personnel).

*Czech Republic.* Specific measures for limitations should be provided for by national legislation in accordance with national circumstances. The Protocol could mention several kinds of such limitations to be chosen voluntarily by the ratifying State.

*Ethiopia.* Yes; (a) and (b), depending on whether inspection requires permission or not; (c) not always; (h) restriction; (j) no other limitations.

*Finland.* In a Protocol, there is no need to go into such detailed regulations.

*France.* CFDT: (a), (d), (g) and (h).

*Germany.* Any limitations should be oriented along the line of Convention No. 81. Thus only security clearance is acceptable. (a), (g) and (h), restriction. All other limitations are rejected, since in any case a State institution should be established for the supervision of State establishments, whose employees would not be exposed to greater risk of treason than employees of the armed forces themselves. Within the State supervisory body a special department should be created for inspection of the armed forces, on account of the particularities of that sector.
DGB: (a).

*Greece.* GCGW: See reply to paragraph 1. The instrument should state that the competent authority should inspect the workplaces of the armed services on a periodical basis, and after any serious incident or accident.

*Hungary.* Yes, all; (h), restriction.

*Indonesia.* (h) prohibition.

*Ireland.* (b), (h), restriction, and (i).

*Italy.* (a), (c), (d), (f) and (g).
CIDA: all.

*Lithuania.* (a) national laws or regulations should provide for a special pass to enter workplaces of state defence, police or prisons; (b) if the inspection were coordinated with the institution to be inspected; (c), (d), (e), (f), (g), (h), (i), (j) national laws or regulations should provide for any orders necessary.

*Moldova, Republic of.* All.

*Myanmar.* (a).

*Netherlands.* FNV: Only if the necessity for those limitations can be documented and complemented by alternative measure to compensate as far as possible for the effects of the limitations. In the experience of the FNV, limitations have often been allowed, when there was insufficient necessity to do so. Alternative and compensatory measures were often possible but not obligatory.

*New Zealand.* Labour inspectors' power to enter any defence area is subject to any regulations under the Defence Act, 1990. Under the Health and Safety in Employment Act, their power of entry in any defence area is limited in accordance with a written agreement between the Secretary of Labour and the Chief of the Defence Force.
NZCTU: Yes.
NZEF: Any or all.

*Nicaragua.* (h), prohibition.

*Norway.* (a), (f), (g) and (h).

*Peru.* Certain limitations, for reason of security.

*Philippines.* Only (d) to (i).

*Poland.* Yes, (a) to (f) and (i); (h) prohibition; no, (g) and (j).

*Portugal.* CIP: (a), (c), (d), (e), (g) and (h), restriction.

*Russia.* (d), (f), to (i).

*Seychelles.* Not applicable.

*Slovakia.* (b), (d), (f), (g), (h) limitation and, according to national needs, declared by law, even prohibition, and (i).

*Sudan.* Yes.

*Suriname.* (a), (f), (g), (h) prohibition; and (i).

*Sweden.* (a) to (d).

*Switzerland.* (a), (b) and (d); (f) and (g) should not prohibit inspections, but these should take place in agreement with the responsible military authority.
SGB: No.
CNG: Any such limitations should be reduced to a minimum, to maintain as complete as possible a harmonization of labour inspection procedure. Yes, (a), (d), (f) and (g).

*Syrian Arab Republic.* CoI: Yes. (a), (d), (h) and (i).

*Tunisia.* Yes.

*Turkey.* Yes, (f), (g) and (h).
TÜRK-IS: (b), (d), (f), (g), (h) and (i).

*United Kingdom.* (a), (b), (d), (h) restriction only, (i). Matters dealt with in (f) are best left to the discretion of the inspection bodies.
TUC: The TUC does not regard the limitations listed in paragraph 2 appropriate, as their application would diminish the ability of inspectors to carry out their work. It recognizes, however, that there is a certain "sensitivity" in this area and working arrangements need to be developed between the inspectorate and the armed services.

*United States.* See reply to Question 12, paragraph 1.
USCIB: (a) to (g), prohibition during military actions, and (i).

*Should any of the limitations in paragraph 2 apply in the same manner to sites at which civilian (non-uniformed) employees work? (If so, please specify.)* **Qu. 12 (3)**

*Total number of replies: 37.*

*Affirmative: 18.* Belarus, Benin, Bulgaria, Canada, Hungary, Indonesia, Italy, Lithuania, Republic of Moldova, New Zealand, Norway, Philippines, Sudan, Suriname, Switzerland, Tunisia, United Kingdom, United States.

*Negative: 16.* Algeria, Czech Republic, Ecuador, Egypt, Ethiopia, Finland, Germany, Ireland, Kuwait, Latvia, Myanmar, Nicaragua, Poland, Seychelles, Slovakia, Turkey.

*Other: 3.* Australia, Republic of Korea, United States.

*Algeria.* See answer to paragraph 1.

*Australia.* Restrictions only in areas relating to confidentiality and secrecy.
ACCI: Yes, (a) to (g), (h) restrictions.
ACTU: No.

*Belarus.* Yes, see answer to paragraph 2.

*Belgium.* See answer to paragraph 1.

*Benin.* Yes, (f), (g) and (h).

*Brazil.* CNC: See answer to Questions 7 and 8.

*Bulgaria.* Yes, (b), (d), (f), (g) and (h).

*Canada.* Yes, see answer to paragraph 2.
CLC: No.
PSA: No.
CEP: No.

*Cyprus.* Yes.

*France.* CFDT: No.

*Greece.* GCGW: See replies to paragraphs 1 and 2. Fewer limitations should apply to such sites, to ensure the free functioning of labour inspection.

*Indonesia.* Yes, (a) to (e), and (h).

*Korea, Republic of.* See reply to paragraph 1.

*Lithuania.* Limitations in paragraph 2 should be applied also to civilian employees working in institutions of state defence, police, namely (c) to (j).

*Netherlands.* FNV: No.

*New Zealand.* Yes. The limitation on inspections under the Health and Safety in the Employment Act is for security reasons, and civilian employees could work in such areas.

*Norway.* Yes, to the extent that restrictions have to apply to safeguard State security, national defence or relations with other States.

*Philippines.* Yes, (d) to (i).

*Portugal.* CIP: Yes.

*Sudan.* Yes, all limitations stated in paragraph 2.

*Switzerland*. Considerations of national security could apply. The effectiveness of inspections should, however, not suffer from any such restrictions.

*United Kingdom*. Yes, (a), (b), (d) and (h).
TUC: No.

*United States*. See reply to paragraph 1.
USCIB: (a) to (e), (h) and (i).

The text of the Proposed Protocol provides that, in principle, workplaces in the armed services should fall within its scope. A majority of governments in this case wished to make special arrangements for the inspection of such workplaces by labour inspectors, although Germany proposed that a special department be created within the state supervisory body for inspection of the armed forces to account for the peculiarities of that sector. The majority of employers' and workers' organizations also favoured retaining the possibility of special arrangements. The small number of Members not in favour of such special arrangements essentially confirmed their earlier position. The Government of Namibia, while affirmative, felt that such arrangements should be left to member States concerned. In essence, this was also the position of the United States. The Swiss Trade Union Confederation was against allowing special arrangements, as this might also allow weaker regulations, whereas the government of Suriname considered such arrangements necessary to ensure that workers in such workplaces enjoy the same degree of protection as those in industrial and commercial workplaces. This position was shared by the workers' organizations of Canada (CUPE), Greece (GCGW) and New Zealand (NZCTU).

The Office proposes to leave it open to Members to make such special arrangements for inspection by labour inspectors of workplaces of the armed forces *(Article 4, paragraph 1)*.

As to the scope of such special arrangements, the analysis of replies received shows that the overwhelming majority wanted to see them confined to the limitations on the powers of labour inspectors provided for in Article 12 of Convention No. 81, as listed in Question 12, paragraph 2 (a) to (i). Only seven governments were in favour of other limitations, without, however, specifying which. As to subparagraph (h), replies were almost equally in favour of either a restriction or prohibition, or left it open. Even if only an average of between 20 and 25 governments replied affirmatively to any one of the limitations enumerated in paragraph 2 (a) to (i), this was clearly a matter of serious concern to Members. Only one country, Finland, felt that there was no need to go into such detail in a Protocol.

The Czech Republic was of the view that, while specific limitations should be provided for in national legislation, the Protocol could indicate several alternatives to be chosen voluntarily by the ratifying Member. Australia considered that limitations on all aspects of any inspection should be provided for, whereas a Swiss workers' organization (CNG) felt that any such limitations should be reduced to a minimum, in order to maintain as complete as possible a harmonization of labour inspection procedures.

The Office thus proposes that the Protocol should permit specific limitations on the powers of labour inspectors as provided for in Article 12 of Convention No. 81 when inspecting workplaces of the armed services, as listed in Question 12,

paragraph 2 (a) to (i). This position is reflected in the Proposed Protocol *(Article 4, paragraphs 1 and 2)*.

No clear picture emerges as to whether or not inspection by labour inspectors of sites at which civilian (non-uniformed) employees work should be subject to any of the same limitations. Eighteen governments replied in the affirmative, being in favour of some or all of the limitations. Fifteen governments were against allowing such limitations, and five had other views. Thus Australia, Lithuania, New Zealand, Norway and Switzerland felt that restrictions should apply only in areas relating to confidentiality, the latter, however, being of the opinion that the effectiveness of inspections should not suffer from any such restrictions.

The Office considers that, in the light of the views expressed, limitations on the powers of labour inspectors should also be permitted in regard of civilians in workplaces of the armed services. It would be for the Conference to make any distinction between military and civilian personnel in that respect. This would certainly be the case in respect of the limitations listed in paragraph 2 (a) to (d).

*Should the instrument(s) provide that a Member may make special arrangements for the inspection of workplaces of the police and/or other public security services, if they fall within their scope?* **Qu. 13 (1)**

*Total number of replies: 53.*

*Affirmative: 29.* Angola, Australia, Belarus, Benin, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Myanmar, New Zealand, Nicaragua, Philippines, Poland, Portugal, Russian Federation, Slovakia, Sudan, Suriname, Switzerland, Tunisia, United Kingdom.

*Negative: 17.* Algeria, Austria, Belgium, Colombia, Cuba, Denmark, Ecuador, Egypt, Kuwait, Morocco, Netherlands, Norway, Romania, Sweden, Syrian Arab Republic, Turkey, United Arab Emirates.

*Other: 7.* Brazil, Canada, Republic of Korea, Lebanon, Namibia, Seychelles, United States.

*Algeria.* The security and police services have civil service status and a special service statute. These services cannot be subject to control by the labour inspectorate and they have their own inspection arrangements.

*Australia.* ACTU: See reply to Question 12, paragraph 1.

*Belgium.* See answer to Question 7. Police services come under the local authorities and are in particular submitted to technical and medical labour inspection.

*Brazil.* See answer to Question 7.
CNC: No.

*Canada*. The Gorvernment proposes to replace the words "if they fall within their scope" by "where they have not been excluded under Question 8": consistent with changes to Questions 7 and 8.
CLC, PSA, CUPE and CEP: No.

*Colombia*. CGTD: Yes.

*France*. CFDT: Yes.

*Germany*. DGB: See reply to Question 12, paragraph 2.

*Greece*. GCGW: See reply to Question 12, paragraph 1.

*Japan*. RENGO: Yes.

*Korea, Republic of*. The Government is opposed to including these services in the scope of the instrument. However, if they were to be included, special arrangements (provisions) would be required.

*Lebanon*. See reply to Question 12, paragraph 1.

*Morocco*. The Government suggests to include the police and public security services among sectors to be covered by the instrument; therefore, there is no need for a Member to make special arrangements for the inspection of such workplaces. The same applies to workplaces which are part of fire brigades, prison services, and customs.

*Namibia*. See reply to Question 12, paragraph 1.

*Netherlands*. See reply to Question 7.
FNV: If needed. See also reply to Question 7, paragraph 1.

*New Zealand*. Yes, although this is not necessary for New Zealand.
NZCTU: Provided that the instruments make it clear that standards of inspection remain comparable with those in respect of the general provisions of the instrument.

*Seychelles*. Not applicable.

*Sweden*. The supervisory field of the Swedish Labour Inspectorate fully covers the activities referred to in these questions; there is no need for any special arrangements.

*Switzerland*. SGB: No. Analogy with the reply under Question 12, paragraph 1.

*Turkey*. TÜRK-IS: Yes.

*United Arab Emirates*. No. See reply to Question 12, paragraph 1.

*United Kingdom*. TUC: The situation regarding the police is confused. Police officers are not subject to health and safety legislation. They are appointed by warrant and are therefore not deemed to be employed or self-employed, which is the criterion for health and safety legislation to be applicable. Police premises, however, are subject to inspection. Civilian staff are also subject to health and safety legislation. A situation could thus exist where a civilian performs the same duties as an officer, side by side, but the officer would be exempt from health and safety legislation. Evidently there is a need for harmonization to ensure that all in the police services are included, just as in the fire service. The TUC therefore believes that the proposal to include the police comes at an appropriate time.

*United States*. Should be left to national law and practice.
USCIB: Yes, but only if it would result in danger to police personnel or to public health and safety, narrowly defined as occurring during active police or security operations.

**Qu. 13 (2)** *If so, should such arrangements permit any of the limitations set out in question 12 (2)? (Please specify.)*

*Total number of replies: 29.*

*Affirmative: 23.* Angola, Belarus, Benin, Bulgaria, Canada, Cyprus, Germany, Hungary, Indonesia, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Myanmar, Nicaragua, Philippines, Russian Federation, Slovakia, Sudan, Suriname, Tunisia, United Kingdom.

*Negative: 3.* Egypt, Finland, Kuwait.

*Other: 3.* Australia, Czech Republic, Switzerland.

*Angola.* Yes, the police; the same restrictions as in Question 12, paragraph 2.

*Australia.* Not all limitations set out in Question 12, paragraph 2, are relevant to the police. However, matters which might infringe upon issues of privacy or confidentiality might call for restrictions.
ACCI: Yes, (a) to (g), (h) restrictions.
ACTU: (d), (f), (g), (h), and (i).

*Belarus.* (b), (d) to (g), (h) restrictions.

*Benin.* Yes, (a) to (i).

*Bulgaria.* See answer to Question 12, paragraph 2.

*Canada.* Yes, (a) to (i), (h) prohibition.
PSA: Not applicable.

*Cyprus.* (c), (d), (f), (i) and (j).

*Czech Republic.* See reply to Question 12, paragraph 2.

*Finland.* See reply to Question 12, paragraph 2.

*France.* CFDT: (c), (d), (f) and (g).

*Germany.* Yes, if inspectors had access to classified documents or to sensitive areas in the course of their duties.

*Greece.* GCGW: See also reply to Question 12, paragraph 2.

*Hungary.* All.

*Indonesia.* (h), prohibition.

*Ireland.* Yes, (b), (h) and (i).

*Italy.* (a), (c), (d), (f) and (g).

*Latvia.* Yes.

*Lithuania.* (c) to (j). Limitations should apply also to civilians in workplaces of state defence, police, prisons.

*Moldova, Republic of.* All.

*Myanmar.* (a).

*Netherlands.* FNV: See reply to Question 7, paragraph 1.

*Nicaragua.* All.

*Philippines.* All.

*Portugal.* CIP: (a), (c) to (e), (g) and (h) restriction.

*Russian Federation.* (d), (f), (h) and (j) prohibition of inspection during active policing or security operations.

*Slovakia.* See reply to Question 12, paragraph 2.

*Sudan*. Yes.

*Suriname*. (a), (f), (g), (h) prohibition, and (i).

*Switzerland*. Inspections in case of emergency activities should only take place in agreement with the responsible persons of the NCS sector.
SGB: No.

*Syrian Arab Republic*. CoI: No.

*Tunisia*. Yes.

*Turkey*. TÜRK-IS: Same as in reply to Question 12, paragraph 2.

*United Kingdom*. (a), (d), (h), restriction (i). Matters dealt with in (f) are best left to the discretion of the inspection bodies.
CBI: (a), (d) and (h).

*United States*. USCIB: No.

**Qu. 13 (3)** *If limitations are permitted with regard to inspection during active policing or security operations, should the instrument(s) provide that the competent authority review such operations periodically and after any significant incident?*

*Total number of replies: 26.*

*Affirmative: 17.* Australia, Belarus, Benin, Canada, Germany, Hungary, Indonesia, Ireland, Latvia, Lithuania, Republic of Moldova, Myanmar, Philippines, Russian Federation, Suriname, Tunisia, United Kingdom.

*Negative: 8.* Cyprus, Czech Republic, Egypt, Finland, Republic of Korea, Kuwait, Nicaragua, Sudan.

*Other: 1.* Slovakia.

*Belarus*. A check of operations after any serious incident.

*Benin*. Inspections should be obligatory after every incident, whether significant or not, in order for appropriate measures to be taken to prevent recurrence.

*Germany*. The instrument(s) could envisage the obligation to undertake the inspection in such cases within an adequate period of time after the end of such activities.

*Greece*. GCGW: Yes. Paragraph 3 of Convention No. 81 should be reformulated so that inspectors have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force for the above sectors, if the procedure prescribed was not compatible with the administrative or judicial practice of the Member.

*Italy*. CIDA: Yes.

*Netherlands*. FNV: Yes.

*Portugal*. CIP: Yes.

*Slovakia*. Review according to need, but not periodically and after each significant incident.

*Switzerland*. SGB: Yes.

*Turkey*. TÜRK-IS: Yes.

*United States*. USCIB: Yes.

A majority of Members replying to paragraph 1 of this question (exactly half of all those in favour of adopting a new instrument) answered in the affirmative. Those against, such as Algeria or Belgium, referred to the special status of the police and security services, while indicating that they were subject to inspection arrangements. Others, such as Sweden and New Zealand, did not see the need for special arrangements, as their labour inspectorates fully covered this subsector, while the United States wished to leave this matter to national law and practice. The Proposed Protocol reflects the majority view with regard to the issues raised in paragraph 1 *(Article 4, paragraphs 1 and 2)*.

As regards paragraph 2, a substantial majority replied in the affirmative. Several governments, such as Australia, Germany, Lithuania, Myanmar and the United Kingdom, emphasized that not all the limitations set out in Question 13, paragraph 2, were relevant to the police force. They tended to accept, however, that matters which might infringe on issues of confidentiality or security could justifiably attract limitations. Some governments, such as Ireland, the Russian Federation and Switzerland, were sensitive to the need to restrict the powers of labour inspectors during declared periods of tension. However, a clear majority of replies favoured permitting most of the limitations listed in Question 12, paragraph 2 (a) to (i). The Office therefore proposes to include the full list of the above limitations in the Proposed Protocol.

With regard to paragraph 3, only 17 governments replying were in favour and some of these, such as Belarus, Benin, and Germany, somewhat qualified their replies. The Office therefore does not see sufficient grounds for including such a provision in the Proposed Protocol.

*Should the instrument(s) provide that a Member may make special* **Qu. 14 (1)** *arrangements for the inspection of workplaces of fire brigades and other rescue services, if they fall within their scope?*

*Total number of replies: 55.*

*Affirmative: 34.* Angola, Australia, Belarus, Benin, Bulgaria, Cyprus, Czech Republic, Ecuador, Ethiopia, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Republic of Korea, Latvia, Lithuania, Republic of Moldova, Myanmar, New Zealand, Nicaragua, Peru, Philippines, Poland, Portugal, Russian Federation, Slovakia, Sudan, Suriname, Switzerland, Tunisia, Turkey, United Arab Emirates.

*Negative: 16.* Algeria, Austria, Belgium, Colombia, Cuba, Denmark, Egypt, Kuwait, Lebanon, Morocco, Netherlands, Norway, Romania, Sweden, Syrian Arab Republic, United Kingdom.

*Other: 5.* Brazil, Canada, Namibia, Seychelles, United States.

*Algeria.* See answer to questions 7, 12 and 13.

*Austria.* Special arrangements should only consist in restricting inspections to avoid possible interference with ongoing rescue, fire-fighting or other emergency operations. However, even in these situations inspection activities should not be prohibited. Such ongoing operations could be observed by an inspector while avoiding interference; in subsequent discussions of shortcomings, dangerous situations, etc., observed improvements in operational conditions and better protection of such workers could then be achieved, as in any other cases.

*Brazil.* See answer to Question 7.
CNC: No.

*Canada.* The Government proposes to replace "if they fall within their scope" by "where they have not been excluded under Question 8", consistent with changes to Questions 7 and 8.

CLC, CUPE and CEP: No.
PSA: Yes, for situations addressed in paragraph 2, where inspections would not be warranted.

*Colombia.* Labour inspection varies from country to country. Thus, a specialized type of inspection would be required for fire brigades, rescue services and other emergency operations; a problem not yet sufficiently studied in the country.
CGTD: Refers to previous replies.

*France.* CFDT: Yes.

*Germany.* Yes. See reply to Question 12, paragraph 2.
DGB: No.

*Greece.* GCGW: No.

*Japan.* RENGO: No.

*Lebanon.* See reply to Question 12, paragraph 2.

*Morocco.* See reply to Question 13, paragraph 1.

*Namibia.* See reply to Question 13, paragraph 1.

*Netherlands.* No. See reply to Question 7.
FNV: Yes. See also reply to Question 7, paragraph 1.

*New Zealand.* Yes. See reply to Question 13, paragraph 1.
NZCTU: No. See reply to Question 13, paragraph 1.

*Peru.* Special arrangements should be made to enable corrective measures to be applied within a specified time, or immediately in case of imminent danger, taking into account any pertinent restrictions.

*Portugal.* CIP: No.

*Seychelles.* Not applicable.

*Sweden.* No. See reply to Question 13, paragraph 1.

*Switzerland.* SGB: No. Analogy with the reply under Question 12, paragraph 1.

*Syrian Arab Republic.* CoI: Yes.

*Turkey.* Yes. Special arrangements such as restrictions on inspection.
TÜRK-IS: No.

*United Kingdom.* Whilst UK health and safety legislation and inspection apply to the fire services, they are seeking exemption from some elements of such legislation, such as the Noise at Work Regulations.

*United States.* This should be left to national law and practice.

USCIB: Yes, but only if it would result in danger to fire and rescue personnel or public health and safety, narrowly defined, during active fire or rescue operations.

*If so, should such arrangements permit the restriction or prohibition of inspection during the actual fighting of a fire or during rescue or other emergency operations? (If so, please specify whether a restriction or a prohibition.)* **Qu. 14 (2)**

*Total number of replies: 36.*

*Affirmative for restriction: 16.* Angola, Bulgaria, Cyprus, Ecuador, Ethiopia, Ireland, Latvia, Lithuania, Peru, Philippines, Russian Federation, Slovakia, Sudan, Tunisia, Turkey, United Arab Emirates.

*Affirmative for prohibition: 11.* Australia, Belarus, Benin, Czech Republic, Germany, Hungary, Indonesia, Italy, Lebanon, Nicaragua, Suriname.

*Negative:* 2. Myanmar, United Kingdom.

*Other: 7.* Bulgaria, Canada, Finland, Republic of Korea, Republic of Moldova, Poland, Switzerland.

*Australia.* ACCI: Restriction.

*Bulgaria.* See answer to Question 12, paragraph 2.

*Brazil.* CNC: Prohibition.

*Canada.* Restriction and prohibition should both be available as options to be selected by the competent authority according to operational needs and circumstances.
CUPE: Restriction.
PSA: Prohibition.

*Czech Republic.* Also at any time when inspection would endanger fulfilment of the operation's aims or the life of the inspector.
CMTU: Restriction.

*Finland.* See reply to Question 12, paragraph 2.

*France.* CFDT: Restriction.

*Korea, Republic of.* Restriction or prohibition of inspection considering the nature of operations.
KFTU: Restriction.

*Moldova, Republic of.* Restriction or prohibition.

*Netherlands.* FNV: Yes. See also reply to Question 7, paragraph 1.

*Poland.* Yes.

*Portugal.* CIP: Restriction.

*Switzerland.* See reply to Question 13, paragraph 2.
SGB: No.

*Syrian Arab Republic.* CoI: No.

*United Kingdom.* No. Such matters are best left to the discretion of the inspecting bodies. At present, health and safety inspectors do not get involved during actual fire-fighting or during rescue or other emergency operations.

*United States.* USCIB: Prohibition.

**Qu. 14 (3)** *If it is considered that inspection should be so restricted or prohibited, should the instrument(s) provide that the competent authority review such operations periodically and after any significant incident?*

*Total number of replies: 33.*

*Affirmative: 24.* Angola, Belarus, Benin, Canada, Ecuador, Ethiopia, Hungary, Indonesia, Ireland, Italy, Latvia, Lithuania, Republic of Moldova, Myanmar, Nicaragua, Philippines, Poland, Romania, Sudan, Suriname, Switzerland, Tunisia, Turkey, United Arab Emirates.

*Negative: 9.* Australia, Cyprus, Czech Republic, Egypt, Finland, Germany, Republic of Korea, Kuwait, Slovakia.

*Australia.* ACCI and ACTU: Yes.

*Belarus.* Review of operations after any significant incident.

*Brazil.* CNC: Yes.

*Greece.* GCGW: Yes.

*Netherlands.* FNV: Yes.

*Portugal.* CIP: Yes.

*Syrian Arab Republic.* CoI: Yes.

*United States.* USCIB: Yes.

The majority of affirmative replies were in favour of permitting Members to make certain special arrangements for inspection by labour inspectors of the workplaces of fire brigades and rescue services. A majority of workers' organizations were against any such arrangements. The governments which negatively replied did so for essentially two quite opposite reasons. Some governments, such as Austria, Cuba, Denmark, Morocco, Norway, Sweden and the United Kingdom, were not in favour of any special arrangements, as workplaces of fire brigades and other rescue services already came, or should in their view come, fully under the responsibility of the State labour inspection services. Others, such as Colombia, Egypt, Kuwait, Lebanon and Syria for example, did not wish to see these services subjected to any form of independent state labour inspection, even if its powers were restricted in terms of paragraph 2. The United States Government believed that the matter should be left to national law and practice.

The text proposed by the Office should not cause any problems to those Members which have already accommodated inspection of fire brigades or those which, like

Austria and Peru, consider, on the contrary, that inspectorates might have a particular role to play even during the fighting of a fire or during an actual rescue operation. However, more than three-quarters of the replies received on this matter (in reply to paragraph 2) were affirmative, with preference for restriction (16) as against prohibition (10). The majority of employers' and workers' organizations' replies were also in favour of permitting restrictions only during actual operations, and the Proposed Protocol formulated by the Office therefore reflects this majority view *(Article 5, first sentence)*.

As regards paragraph 3, over 70 per cent of government replies were in the affirmative *(Article 5, second sentence)*.

*Should the instrument(s) provide that a Member may make special arrangements for the inspection of prisons, if they fall within their scope?* **Qu. 15 (1)**

*Total number of replies: 54.*

*Affirmative: 33.* Angola, Australia, Austria, Belarus, Benin, Brazil, Bulgaria, Cyprus, Czech Republic, Ethiopia, Hungary, Indonesia, Ireland, Italy, Republic of Korea, Latvia, Lithuania, Republic of Moldova, Myanmar, New Zealand, Nicaragua, Peru, Philippines, Poland, Portugal, Russian Federation, Slovakia, Suriname, Switzerland, Tunisia, Turkey, United Arab Emirates, United Kingdom.

*Negative: 16.* Algeria, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Kuwait, Lebanon, Morocco, Netherlands, Norway, Romania, Sudan, Sweden, Syrian Arab Republic.

*Other: 5.* Belgium, Canada, Namibia, Seychelles, United States.

*Algeria.* See answers to Questions 7, 12 and 13.

*Australia.* Yes, assuming the Question refers only to prison employees and not the inspection of prisoners.

*Belgium.* See answers to Questions 7 and 12. Prisons come under the Ministry of Justice.

*Brazil.* CNI: Unanswerable in view of replies to Questions 7 and 8.
CNC: Yes.

*Bulgaria.* Yes, vis-a-vis civilian personnel.

*Canada.* The Government proposes to replace "if they fall within their scope" by "where they have not been excluded under Question 8", consistent with changes to Questions 7 and 8.
CEP and CLC: No.
CUPE and PSA: Yes.

*Colombia.* No. See answer to Question 14, paragraph 1.
CGTD: There should be special norms to regulate this matter.

*Denmark*. Subject to the modifications following from the nature of the work, inmates in Danish prisons are also considered to be performing work for an employer.

*Finland*. See reply to Question 12, paragraph 2.

*France*. CFDT: Yes.

*Germany*. DGB: No.

*Japan*. RENGO: No.

*Korea, Republic of*. Yes (though opposed in principle to application to prisons), on condition that a special provision is inserted in the instrument.

*Lithuania*. It was possible to provide special inspection methods for institutions having the structure of a prison.

*Morocco*. See reply to Question 13, paragraph 1.

*Namibia*. Member States who wished to include the prisons services within the scope of the instrument(s), should make appropriate arrangements for inspections to be carried out in prisons. Competent authorities in member States should be fully responsible for such arrangements.

*Netherlands*. No. See reply to Question 7.
FNV: Yes. See also reply to Question 7, paragraph 1.

*New Zealand*. Yes. See reply to Question 13, paragraph 1.

*Seychelles*. Not applicable.

*Slovakia*. Yes, only at times of tension or periods of revolt.

*Sweden*. No. See reply to Question 13, paragraph 1.

*Switzerland*. SGB: No. Analogy with reply to Question 12, paragraph 1.

*Syrian Arab Republic*. CoI: Yes.

*Turkey*. TÜRK-IS: No.

*United Kingdom*. TUC: Special arrangements would have to be made for inspection of prison services. Just like the army, the police or fire brigades, they are of varying nature and undertake various activities, not all of which require high security. Crown immunity should be removed from prison premises. Already, guards contracted by the Home Office to perform prison officers' work are not covered by Crown immunity and have to comply with health and safety legislation. If this applies to one group of staff, it should be applicable to all in the prison service.

*United States*. This should be left to national law and practice.
USCIB: Yes.

**Qu. 15 (2)** *If so, should such arrangements permit any of the following limitations on the powers of labour inspectors as provided in Article 12 of Convention No. 81:*

*(a) restriction of entry to inspectors having appropriate security clearance?*

*(b) inspection only by appointment?*

*(c) restriction of inspection during declared periods of tension?*

*(d) other restriction of inspection related to security requirements? (If so, please specify.)*

*Total number of replies: 39.*

*Affirmative: 30.* Australia, Belarus, Benin, Brazil, Bulgaria, Canada, Cyprus, Czech Republic, Ethiopia, Hungary, Indonesia, Ireland, Italy, Republic of Korea, Latvia, Lebanon, Myanmar, Nicaragua, Peru, Philippines, Poland, Russian Federation, Slovakia, Sudan, Suriname, Switzerland, Tunisia, Turkey, United Arab Emirates, United Kingdom.

*Negative: 5.* Angola, Egypt, Finland, Kuwait, Norway.

*Other: 4.* Austria, Italy, Lithuania, Moldova.

*Australia.* Yes, (c), (d), where safety of inspectors, prison staff, prisoners or the public are at risk.
ACCI: Yes (a) to (c).

*Austria.* With regard to (a), it should be considered whether such security clearance of civil servants would not be considered discriminatory.

*Belarus.* Yes, (b) and (c); (d) quarantine, incidents connected with the taking of hostages, seizure of weapons by prisoners, etc.

*Benin.* (a) to (d) for reasons of security; to (d) should be added restrictions on the right to take and analyse samples of materials and substances, and restrictions on the obligation to produce documents.

*Brazil.* Yes, (a) to (d).
CNC: No.

*Bulgaria.* Yes, (b) and (c). There should be no restrictions of entry to inspectors having appropriate security clearance.

*Canada.* Yes (a) to (c), according to Members' practices, needs and circumstances.
CUPE and PSA: (c).

*Colombia.* CGTD: Labour inspectors should not enter such restricted workplaces. If problems of labour protection arise, they should be dealt with administratively or in the offices of the labour inspectorate.

*Cyprus.* (c).

*Czech Republic.* Yes, (a) and (c). See reply to Question 12, paragraph 2.

*Ethiopia.* (a), (b) and (d): non-disclosure of secrets regarding establishment procedures or security arrangements.

*France.* CFDT: Special arrangements should be limited to those areas justifying particular security measures.

*Hungary.* Yes, (a) and (c).

*Indonesia.* Yes, (d), in case of emergency situations.

*Ireland.* (a) to (c).

*Italy.* Some limitations should be possible.
CIDA: (a) to (c).

*Korea, Republic of.* (a).

*Latvia.* (a) to (c).

*Lebanon*. If prisons were included, then (a) to (c) should apply.

*Lithuania*. (a). A special pass for inspectors should be considered.

*Moldova, Republic of*. Arrangements should permit any limitations set out in Question 12, paragraph 2, on the powers of labour inspectors as provided in Article 12 of Convention No. 81.

*Myanmar*. (a).

*Netherlands*. No. See also reply to Question 7, paragraph 1.
FNV: Yes, if necessary. See also answer to Question 7, paragraph 1.

*Nicaragua*. Yes.

*Peru*. (a) and (b).

*Philippines*. (c) and (d).

*Poland*. (a) to (c).

*Portugal*. CIP: All except (b).

*Russian Federation*. Yes. (a) and (c), restriction on entry of inspectors with appropriate security clearance, for example if the prison administration has information to the effect that the inspector in question has a personal interest in visiting the prison.

*Slovakia*. (c).

*Sudan*. (a) to (c).

*Suriname*. (a) and (c).

*Switzerland*. (a) and (b).
SGB: No.

*Syrian Arab Republic*. CoI: Yes. (b).

*Tunisia*. (a) to (c).

*Turkey*. No.

*United Arab Emirates*. (a) to (c).

*United Kingdom*. (a) to (c).
TUC: Arrangements should reflect the nature of the prison establishment and activity being inspected.

*United States*. USCIB: (c) only.

**Qu. 15 (3)** *Should the instrument(s) apply in the same manner to prison staff and prisoners when performing work?*

*Total number of replies: 38.*

*Affirmative: 23*. Belarus, Belgium, Benin, Brazil, Cyprus, Czech Republic, Ethiopia, Hungary, Indonesia, Ireland, Latvia, Lithuania, Republic of Moldova, Nicaragua, Norway, Philippines, Poland, Romania, Russian Federation, Slovakia, Sudan, Suriname, Switzerland.

*Negative: 12*. Australia, Bulgaria, Denmark, Egypt, Finland, Germany, Republic of Korea, Kuwait, Lebanon, Myanmar, United Arab Emirates, United Kingdom.

*Other: 3.* Canada, Tunisia, Turkey.

*Australia.* ACCI and ACTU: Yes.

*Austria.* BAK: Yes.

*Bulgaria.* See reply to Question 7, paragraph 2.

*Canada.* This clause should afford Members the flexibility to distinguish, in their special arrangements for inspections of prisons, between, on the one hand, prison staff and, on the other hand, inmates participating in a work project or rehabilitation programme.

*Canada.* PSA: Yes.

*Denmark.* No. Provisions concerning occupational health services and safety organizations are not enforced in relation to inmates.
LO: Yes.

*Finland.* See answer to Question 12, paragraph 2.

*France.* CFDT: Yes.

*Italy.* CIDA: Yes.

*Korea, Republic of.* It should not apply to prison staff.

*Netherlands.* FNV: No.

*Portugal.* CIP: Yes.

*Tunisia.* Only to prison staff, as inmates are not workers.

*Turkey.* Partly.

*United Kingdom.* CBI and TUC: Yes.

*United States.* USCIB: Yes.

Thirty-two countries replied positively to the proposal to allow Members to make special arrangements for the inspection of prisons by labour inspectors. Fifteen were against, but here again for quite opposing reasons (see the Office comments on Question 14). Some governments, such as Denmark, whilst accepting the principle that both prison staff and prison inmates should come under the purview of labour inspection, pointed to the need for certain modifications in consequence of the nature of the work. The United States was again of the opinion that this matter should follow national law and practice. The Office's proposed text reflects the clear majority view.

As regards paragraph 2, there was solid support for permitting some limitations on the powers of labour inspectors. Of the total number of affirmative replies to Question 15, paragraph 1, almost two-thirds were in favour of limitation (a) and (c) and 50 per cent in favour of limitation (b). More than a third of those Members were in favour of other restrictions (d), by and large related to issues of confidentiality. The Office therefore suggests to give recognition to concerns expressed under alternative (d), and the Proposed Protocol thus includes the possibility of limitations as referred to in paragraph (a) to (d) *(Article 4, paragraphs 1 and 3).*

Finally, the majority of governments agreed that the Protocol should apply in the same manner to prison staff and prison inmates, and this is again reflected in the Office text, in so far as it does not propose any distinction in this regard.

**Qu. 16** *Should the instrument(s) provide that a Member may make special arrangements for the inspection of workplaces in national (federal) government administrative services, if they fall within their scope? (If so, please specify).*

Total number of replies: 52.

*Affirmative: 13.* Austria, Ethiopia, Indonesia, Republic of Korea, Latvia, Namibia, New Zealand, Romania, Seychelles, Sudan, Suriname, Tunisia, Uruguay.

*Negative: 33.* Algeria, Angola, Australia, Belarus, Benin, Brazil, Bulgaria, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Finland, Germany, Hungary, Ireland, Italy, Kuwait, Lebanon, Lithuania, Republic of Moldova, Myanmar, Netherlands, Norway, Peru, Philippines, Russian Federation, Slovakia, Sweden, Switzerland, Turkey, United Kingdom.

*Other: 6.* Belgium, Canada, Colombia, Syrian Arab Republic, United Arab Emirates, United States.

*Algeria.* See answers to Questions 7, 12 and 13.

*Australia.* ACCI: Yes, if considerations of security or confidentiality apply.

*Austria.* Yes. This should be left to national law and practice. Any such provisions should, however, not apply to enterprises under the responsibility of regional (territorial) organizations.

*Belgium.* See answer to Question 7.

*Brazil.* CNI: Yes.

*Canada.* The Government proposes to add after "administrative services" the words "including the possibility of limiting inspectors' powers along the lines of Question 12, paragraph 2", consistent with the approach taken in Questions 13, 14 and 15, and to replace "if they fall within their scope" by "where they have not been excluded under Question 8", consistent with changes to Questions 7 and 8. The Government expresses surprise that no reference is made to "provincial, regional, district or local administrative services", as in Question 7, paragraph 2 (b). It is also unclear what level of government is meant by the term "national" which refers, in the Canadian context, to the federal, provincial, or territorial authority as the case may be.

PSA and CUPE: The powers of labour inspectors should not be subject to "special arrangements" for inspection of national (federal) government administrative services.

CLC and CEP: Yes.

*Colombia.* National (federal) administrative labour services are the competent inspection authority in collective labour matters. Labour disputes concerning civil servants or administrative authorities come under the jurisdiction of the Attorney General. In consequence, internal arrangements would have to be made to expand the scope of the competent authority, which would necessitate careful analysis.

CGTD: Yes.

*Ethiopia.* Yes. Inspections should be carried out either by the inspectorate, the local authority, or through any other measures convenient to Members.

*Germany.* DGB: See reply to Question 12, paragraph 2.

*Greece.* GCGW: Yes.

*Indonesia.* Inspection by the competent authority of the concerned institution.

*Japan*. RENGO: Yes.

*Italy*. No, on condition that the inspection is carried out by a national body or coordinated at the national level so as to guarantee impartiality and operational autonomy.
CIDA: Yes.

*Korea, Republic of*. This should be contained in the proposed Recommendation.

*Lebanon*. Yes, if such services were to be included.

*Netherlands*. See reply to Question 7.

*New Zealand*. Yes. See reply to Question 13, paragraph 1.
NZCTU: Yes. See reply to Question 13, paragraph 1.

*Norway*. No. But special arrangements should be in place concerning the foreign service.

*Peru*. They should not come within the scope of the proposed Recommendation.

*Philippines*. They are covered by occupational safety and health standards.

*Portugal*. CIP: Yes, as regards activities falling within the scope of state secrets.

*Romania*. Yes, given the security regulations in the national administration.

*Sudan*. Yes. Ministries, administrations, hospitals, laboratories.

*Sweden*. See reply to Question 13, paragraph 1.

*Syrian Arab Republic*. For federal States only.

*Tunisia*. This is justified as civil servants have a special statute, and because the State has a moral obligation to watch over the well-being of its officials.

*United Arab Emirates*. These workplaces should be excluded from the instrument.

*United States*. This should be left to national law and practice.
USCIB: Yes. No limit on such inspections except as may relate to national security.

As in the case of some of the previous Questions, the majority view, in this case rejecting the proposal to allow Members to make special arrangements for the inspection of national (federal) government administrative services, was in fact divided on the reasons why, and for quite opposite motives. Some governments, such as Algeria, Belgium, Colombia, Peru, Syrian Arab Republic, and the United Arab Emirates, did not wish to see such workplaces fall within the scope of the instrument. Others, such as Cuba, Denmark, Finland, Ireland, New Zealand, Norway, Philippines and Sweden, were against making special arrangements because their State labour inspection systems covered all workplaces in this subsector, while Austria, Ethiopia, Indonesia, the United States, for example, believed that this should be left to national law and practice.

Several governments, as well as employers' and workers' organizations, pointed to the need to give due consideration to questions of security or confidentiality. The Office acknowledges the evident need for the new instrument to provide some flexibility in this regard. It therefore proposes that the instrument should permit special arrangements to protect security and confidentiality. After careful consideration, the Office is of the opinion that such concerns are comprehensively met by applying certain limitations on the powers of labour inspectors (as provided in Article 12 of Convention No. 81) listed under Question 12, paragraph 2 (a) to (d). This solution has the indubitable advantage of being consistent with other provisions and should not cause any problems to those numerous Members which have already

brought such workplaces under the more or less unrestricted purview of their labour inspectorates. The Office therefore proposes a duly amended text *(Article 4, paragraph 1)*.

**Qu. 17 (1)** *Should the instrument(s) preclude labour inspectors from having, in respect of any of the categories of workplaces referred to in question 7, the powers provided for in Article 13 of Convention No. 81, namely:*

*(a) to make, or have made, orders requiring alterations to the installation or plant within a specified time?*

*(b) to make, or have made, orders requiring measures with immediate executory force in the event of imminent danger to the health or safety of workers? or*

*(c) alternatively to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force of the type described in (a) or (b) above?*

*Total number of replies: 53.*

*Affirmative: 14.* Benin: (a) and (b) only, Cuba, Denmark: (a) and (b) only, Kuwait, Latvia, Lebanon: (a) and (b) only, Nicaragua, Peru: (a) and (b) only, Poland, Romania, Seychelles (a) and (b) only, Suriname, Tunisia, United Arab Emirates.

*Negative: 33.* Angola, Australia, Austria, Belgium, Brazil, Bulgaria, Colombia, Cyprus, Czech Republic, Ecuador, Egypt, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Lithuania, Republic of Moldova, Myanmar, Namibia, Netherlands, New Zealand, Norway, Philippines, Portugal, Slovakia, Sweden, Switzerland, Syrian Arab Republic, Turkey, United Kingdom, Uruguay.

*Other: 6.* Algeria, Belarus, Canada, Ethiopia, Republic of Korea, Russian Federation.

*Algeria.* The powers of inspectors are valid, except for those sectors from which they are excluded by law (national defence services, police services, etc.). For the public service sector, appropriate methods of intervention should be given to the inspection services: for example, contacting the competent authority.

*Australia.* No, restriction, except those mentioned in Questions 12, 13, 14 and 15.
ACCI: (a) and (b), no, except in relation to the armed services, the police and other public security services. (c), no.

*Austria.* No. Except for restrictions in the sense of the answer to Question 14, and those implicit if a Member made use of the possibility of excluding specific categories of workplaces. No further limitations should be provided.

*Belarus.* The Protocol should provide that labour inspectors should not make use of the power to order particular engineering improvements in installations or plant within a specified time.

*Bulgaria*. No. For all workplaces to which local legislation extends the scope of the instrument, the text of Article 13 of Convention No. 81 should be retained.

*Canada*. Remedial powers are an integral part of effective labour inspection systems. However, a Member should have the possibility of including such limitations in the special arrangements for sectors which it had excluded from the scope of the Protocol under Question 8, amended as suggested.

PSA: Yes.

CEP and CUPE: No.

*Colombia*. CGTD: (a) to (c).

*Cuba*. Yes, as regards the workplaces excluded. This should be indicated by each ratifying Member.

*Denmark*. See reply to Question 7.

*Ethiopia*. Not totally. Categories of workplaces listed in Question 7, paragraph 2, where serious health and safety risks exist, should be subject to adequate enforcement procedures.

*France*. CFDT: No.

*Germany*. No, except prison services in the sense of the reply to Question 7, paragraph 2 (c).

DGB: In such cases, measures should be taken after the end of the emergency situation, if this is still useful.

*Greece*. GCGW: No.

*Italy*. CIDA: (a) to (c).

*Japan*. RENGO: No.

*Korea, Republic of*. This should be provided by each Member according to its situation.

*Namibia*. As the Conference might adopt international instruments extending Convention No. 81 to the NCS sector in respect of all workplaces listed in Question 7, these should not preclude labour inspectors from inspection at any workplace.

*Netherlands*. No. See reply to Question 7.

*New Zealand*. NZEF: This is a matter for each Member to determine. It should be possible to preclude inspectors' use of the powers specified in respect to any or all of the issues listed in Question 7.

*Peru*. Whenever inspectors are not empowered to carry out special inspections, then (c) would be advisable.

*Philippines*. No. Inspectors should have the powers provided in the conduct of inspection as in industrial or commercial workplaces.

*Russian Federation*. If workplaces fall within the scope of the Protocol, and inspectors observe the special arrangements for inspection (where such arrangements have been made), they should have the powers provided for in Article 13 of Convention No. 81.

*Sweden*. In its official publication, *Basic Inspection Methodology*, the National Board of Occupational Safety and Health has issued internal rules for the Labour Inspectorate's work, e.g. as regards the preparation, conduct and follow-up of inspections. Among other it refers, inter alia, to orders and prohibitions, and to prohibitions issued immediately in the course of an inspection. No exceptions have been made for any particular activity or any particular workplaces.

*Tunisia*. Yes. In respect of categories (a) to (i) of Question 7, paragraph 2, since the powers of Article 13 of Convention No. 81 not only could risk affecting the normal functioning of such establishments, but in certain cases even constitute a danger to the health and safety of the people.

*United States.* USCIB. (a) and (b).

**Qu. 17 (2)** *If you have answered "yes" to paragraph 1 of this question, should the instrument(s) provide in such circumstances for alternative measures? (If so, please specify.)*

*Total number of replies: 17.*

*Affirmative: 9.* Belarus, Ethiopia, Lebanon, Nicaragua, Peru, Poland, Seychelles, Suriname, Tunisia.

*Negative: 7.* Cuba, Denmark, Ecuador, Egypt, Republic of Korea, Latvia, Romania.

*Other: 1.* Benin.

*Belarus.* See answer to paragraph 1. Inspectors should have the right to appeal to the competent authority to issue directives or to order the necessary measures to be taken.

*Benin.* Other measures could be foreseen if they were more effective than those mentioned in Question 17, paragraph 1, line (c).

*Canada.* PSA: See also reply to Question 7, paragraph 2 (n).
CEP: The CEP does not support lesser powers for labour inspectors in certain classes of workplaces.

*Colombia.* CGTD: In cases where labour inspectors act as judges, they should be empowered to make final decisions.

*Denmark.* LO: In addition to the right to issue orders and notices, it should of course also be possible to offer guidance. Inspectors should have the discretion to decide what action to take (Article 17, paragraph 2, of Convention No. 81). Under Danish law, only the courts can impose penal sanctions. However, LO would not object to empowering inspectors to impose extra-judicial fines.

*Ethiopia.* Members should identify alternative means of inspection or appropriate enforcement mechanisms in order to implement the instrument(s) fully.

*Greece.* GCGW: As regards the armed services and the police, Article 13, paragraph 3, of Convention No. 81 could be reformulated so that inspectors had the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force for the above sectors, if the procedure prescribed was not compatible with the administrative or judicial practice of the Member.

*Italy.* CIDA: No.

*Lebanon.* For instance, advice and guidance necessary to prevent hazards.

*Nicaragua.* Inspectors could make recommendations, give warnings or advice, but not orders.

*Peru.* Recommendations and/or preventive powers.

*Seychelles.* Yes, through the competent authorities.

*Tunisia.* Inspectors should be content to notify defects to the competent authorities. It is difficult to imagine how one ministry could impose decisions upon another.

*United States.* USCIB: No.

Of the total number of government replies to this Question, almost two-thirds rejected the proposals contained in paragraph 1. Some governments, such as Belarus, Benin, Denmark, Lebanon, Peru and Seychelles, as well as certain employers' and workers' organizations, supported certain restrictions on the power of labour inspectors under Article 13, paragraph 2 (a) and (b), of Convention No. 81, but would nevertheless wish to see the alternative powers given to inspectors under Article 13, paragraph 3, of Convention No. 81 retained in respect of any of the categories of workplaces referred to in Question 7. Members holding this view, and any who think like them, should therefore not be inconvenienced if the Protocol were in fact to contain no restrictions at all. Australia rejected restrictions, except with regard to the categories of workplace mentioned in Questions 12 to 15. Thus, a very substantial majority of Members were in favour of retaining the powers of inspectors either under Article 13, paragraph 2, or paragraph 3 of Convention No. 81, a choice which even now exists. Therefore, the Office does not see sufficient grounds to retain the possibility of restricting the powers of labour inspectors in the Proposed Protocol. As a further consequence, no alternative measures as envisaged in paragraph 2 are proposed.

*Should the instrument(s) provide that the provisions of Article 17,* **Qu. 18 (1)** *paragraph 1, of Convention No. 81 shall not apply in respect of specified categories of persons? (If so, please specify the categories.)*

*Total number of replies: 55.*

*Affirmative: 9.* Benin, Kuwait, Namibia, Philippines, Poland, Seychelles, Tunisia, United Arab Emirates, Uruguay.

*Negative: 37.* Angola, Australia, Belarus, Belgium, Brazil, Bulgaria, Canada, Colombia, Cuba, Czech Republic, Denmark, Ecuador, Egypt, Finland, Germany, Hungary, Ireland, Latvia, Lebanon, Lithuania, Republic of Moldova, Myanmar, Netherlands, Nicaragua, Norway, Peru, Portugal, Romania, Russian Federation, Slovakia, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Turkey, United Kingdom.

*Other: 9.* Algeria, Austria, Cyprus, Ethiopia, Indonesia, Italy, Repubic of Korea, New Zealand, United States.

*Algeria.* See reply to Question 17.

*Austria.* The instruments should only provide protective standards for workers but exclude voluntary or honorary collaborators (for instance in rescue or fire-fighting services), or prison inmates.

BAK: This question raises the important issue of whether all persons having violated protective regulations can be prosecuted. The question is who, in the public service, would be penally responsible, and how such responsibility could be effectively sanctioned, or sanctions

enforced. Although this might cause problems, imposition and enforcement of coercive measures are essential for any effective inspection system. Such a system does not exist in Austria or has not been developed. It should be implemented in future.

*Belgium.* As long as workplaces are subject to the application of Convention No. 81, there is no need for particular dispositions.

*Canada.* PSA: No. If they come within the scope, any person who violates or neglects to observe legal provisions enforceable by labour inspectors, and agreed to by a Member, should be subject to legal proceedings without previous warning, when appropriate.

*Cuba.* Paragraphs 1 and 2 of Article 17 of Convention No. 81 promote the national response to each situation and should be an integral part of the new instrument.

*Cyprus.* A Government ministry, department or service should not be prosecuted but the officers in charge of such ministry, department or services (as well as other persons working therein) might be prosecuted when they violated, or neglected to observe, legal provisions.

*Ecuador.* Preventive measures are advisable: therefore Article 17, paragraph 2, of Convention No. 81 is applicable.

*Ethiopia.* It should be left to the national law of each Member.

*Greece.* GCGW: The Article should be applied without exception.

*Indonesia.* Indonesia is implementing provisions whereby persons who violate, or neglect to observe, legal provisions enforceable by labour inspectors should be liable to prior warning.

*Italy.* Penal responsibility can only be ascribed to persons who in fact have the power to decide the method of providing services and dispose of the necessary resources to do so in accordance with the law.
CIDA: Yes.

*Japan.* RENGO: No.

*Korea, Republic of.* See reply to Question 17, paragraph 1.
KFTU: In respect of those persons who have access to "confidentials".

*Lebanon.* The provisions of paragraph 1 of Article 17 of Convention No. 81 should apply to all persons to which the Protocol applies, otherwise there would be discrimination in the application of the law according to categories of persons, which would be in contradiction with the principles of justice and equity. If there was a definition for the term "specified categories of persons", and if it meant "specific cases" as stated in Article 17, paragraph 1, of Convention No. 81, this point should be clarified.

*Moldova, Republic of.* The Protocol should provide that the provisions of Article 17, paragraph 1, of Convention No. 81 be applied to all categories of persons.

*Namibia.* The provisions of Article 17, paragraph 1, of Convention No. 81, might not apply to uniformed members of the armed forces and police, because in many countries these categories of persons are covered by the Defence and/or Police Acts.

*Netherlands.* See reply to Question 7.

*New Zealand.* Different enforcement tools might need to be available. For example, in New Zealand, there is a constitutional principle that any part of the Crown is unable to seek a coercive order through the courts against any other part of the Crown. The situation is similar to that in the United Kingdom (as described on page 22 of the ILO report).

*Philippines.* Yes, in particular in workplaces concerning Question 7, paragraph 2 (c).

*Sudan.* No, unless there are measures applying to them.

*Sweden.* No. See reply to Question 17, paragraph 1.

*Tunisia.* Yes, as it is inadmissible that one administration should prosecute another or impose fines. The intervention of the labour inspectors should be limited to advice or recommendations.

*Turkey.* TISK: These details should be laid down at national level within the context of the answers given to Question 8.

*United Arab Emirates.* Yes, to categories specified in Question 7.

*United States.* It should be left to national law and practice.
USCIB: No.

*Uruguay.* Yes, to persons in charge of services to be inspected.

*If you have answered "yes" to paragraph 1 of this question, should the instrument(s) provide in such circumstances for alternative measures in addition to warnings and advice as provided in Article 17, paragraph 2, of Convention No. 81? (If so, please specify.)* **Qu. 18 (2)**

*Total number of replies: 15.*

*Affirmative: 9.* Cuba, Ethiopia, Italy, Republic of Korea, New Zealand, Philippines, Poland, United Arab Emirates, Uruguay.

*Negative: 5.* Benin, Bulgaria, Canada, Egypt, Latvia.

*Other: 1.* Kuwait.

*Austria.* An exception in the sense of Article 17, paragraph 1, second sentence, of Convention No. 81 would be useful and expedient in all cases where compliance with the legal provisions calls for measures that do not fall within the competence of the immediately responsible official. In such cases, after having issued relevant instructions and if these have not been implemented, disciplinary action or notice to the higher authority should be foreseen.

*Benin.* These provisions should not apply to the sovereign or his representatives.

*Bulgaria.* The instrument should not provide that the provisions of Article 17 of Convention No. 81 should not apply in respect of any specified categories of persons.

*Canada.* See comments on Question 17.

*Cuba.* Yes. It should be possible to enforce the law without necessarily initiating legal proceedings. The alternative measures should not be stipulated as this would unnecessarily restrict the inspector's freedom of action.

*Ethiopia.* Alternative measures such as training and information, to allow for internal audit and control in respective workplaces.

*Italy.* It might be preferable to make provision for recourse to other forms of intervention, such as warnings and reports to the higher administrative authorities of abnormal situations, if possible.

*Korea, Republic of.* Giving advice to take corrective or preventive measures under responsible officials'/managers' own initiative could be provided for.
KFTU: Yes.

*Kuwait.* Such measures should be left to the conditions in each member State and the extent to which it accepts the extension of the Convention No. 81 to activities in the non-commercial sector.

*New Zealand.* Alternative enforcement tools are available in New Zealand. The Health and Safety in Employment Act provides that the High Court can make a declaration that the Crown has contravened the Act. Prior to such action being taken, administrative provisions are available for referring any alleged contravention to the Chief Executives (or Ministers) in charge of state agencies. The Department of Labour is also able to pursue similar administrative measures, in relation to compliance by the Crown with the statutory obligations of other employment legislation.

*Philippines.* Yes, notice to the Head of Department concerned.

*United Arab Emirates.* Yes, to be decided by the competent authorities.

*United States.* USCIB: No.

Question 18 raises the important issue of legal proceedings. In the context of the NCS sector, as a rule this means whether or not one arm of the public administration may institute such proceedings against physical persons or legal entities of another. In many member States this issue tends to raise questions of a complex, often constitutional nature. On the other hand (see the comments of the Austrian workers' organization, BAK), the possibility of imposing, and ultimately enforcing, coercive measures is essential for the effectiveness of any labour inspection system. By implication, the 37 governments and several employers' and workers' organizations which replied negatively to Question 18, paragraph 1, in fact took the same view.

Several Members, such as Ethiopia, Republic of Korea and the United States, wished to see the matter dealt with in accordance with national law and practice. Some of the few governments replying in the affirmative were of the opinion that it was inadmissible for one administration to prosecute, or impose fines on, another, and therefore the intervention of inspectors should be limited to warning or advice. This is in fact already provided for as an alternative in Article 17, paragraph 2, of the Convention and should therefore not prevent the Members from accepting that it also applies to the NCS sector. Thus, there is a clear majority in favour of retaining the construction chosen for this issue by the Convention, and this is amplified by the replies of several Members, for example Cuba, which underlined that paragraphs 1 and 2 of Article 17 of Convention No. 81 promoted the national response to each situation and should therefore be an integral part of the new instrument.

Given the strong majority and the convincing arguments advanced, the Office does not propose to retain any restriction on the application of Article 17 of Convention No. 81 in respect of any specified categories of persons in the Proposed Protocol.

**Qu. 19** *Should the instrument(s) provide that the labour inspectorate have a role in formulating and monitoring effective measures to minimize risks during training for potentially hazardous work?*

*Total number of replies: 53.*

• *Affirmative: 40.* Angola, Belarus, Belgium, Benin, Brazil, Colombia, Cuba, Cyprus, Ecuador, Egypt, Ethiopia, Finland, Hungary, Indonesia, Italy, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Republic of Moldova, Myanmar, Namibia, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Romania, Seychelles, Slovakia, Sudan, Suriname, Switzerland, Syrian Arab Republic, Turkey, United Arab Emirates, United States, Uruguay.

*Negative: 9.* Australia, Bulgaria, Czech Republic, Denmark, Germany, Ireland, Netherlands, Sweden, United Kingdom.

*Other: 4.* Algeria, Austria, Canada, New Zealand.

*Algeria.* Labour inspection should preferably participate in the control of effective measures with a view to reducing the risk of accidents, rather than in their formulation.

*Australia.* No. This is more appropriate to the Prevention of Major Industrial Accidents Convention, 1993 (No. 174). The proposed Protocol should not include provisions wider than those already covered by Convention No. 81. Articles 13, paragraph 1 and 17, paragraph 2, already make adequate provision in relation to this suggestion.
ACCI and ACTU: Yes.

*Austria.* In training, a distinction should be made between workers and other persons (in particular students). Labour inspection in this field should be limited to advisory activities.
BAK: Yes. Such a role would be actively positive, as labour inspection could bring in relevant experience based on its supervision activities.

*Canada.* The Government proposes to add after "formulating" the words "at the invitation of the competent authority". While monitoring is automatically an integral part of inspection, the inspectorate's role in the formulation of measures could vary according to circumstances and practice of Members.
CEP and CLC: Yes.
CUPE: The labour inspectorate should participate if requested by the Member, and it should have a role in monitoring.
PSA: No, to formulating. However, an exception could be considered when the labour inspectorate is requested to do so by a Member. Yes, to monitoring effective measures to minimize risk during training for potentially hazardous work.

*Czech Republic.* No. Such a role of labour inspectors should not be obligatory.
CMCTU: Yes.

*Denmark.* LO: Yes.

*France.* CFDT: Yes.

*Germany.* DGB: Yes. Labour inspection should have a central role in this field.

*Greece.* GCGW: Yes.

*Japan.* RENGO: Yes.

*Lebanon.* Yes, in principle, where practicable and possible. There should also be better coordination and consultation between different responsible inspectorates.

*Netherlands.* No. This would introduce a difference between industry and commerce and the NCS sector.
FNV: No, these tasks are too close to consultancy.

*New Zealand.* Not relevant. However, if the new instrument contained provisions allowing countries to exclude some hazardous activities from inspection, then a provision in relation to training for potentially hazardous work could be appropriate. Care should be taken in drafting

any Article along these lines in order to avoid ambiguity. Firstly, the question could be interpreted as meaning that the inspectorate should be involved in working with individual employers to formulate effective hazard control measures in individual workplaces. The primary responsibility should always be on the employer to identify and manage risks. It would therefore not be appropriate for labour inspectors to be involved in formulating effective measures to minimize risks for trainees at the level of the workplace. There is no similar provision in Convention No. 81. The proposed new instrument should limit the role of the inspectorate to monitoring such measures as an employer decided to put in place, in terms of their effectiveness and appropriateness. It might be appropriate for the new instrument to provide for a role for the Government (as distinct from the labour inspectorate) in developing safety and health standards for training and operational procedures in relation to any hazardous activities that the inspectorate was precluded from inspecting. Alternatively, it might be appropriate for the new instrument(s) to provide something similar to Article 3, paragraph 1 (c), of Convention No. 81, which provides for the labour inspectorate to bring defects and abuses not covered by existing legal provisions to the notice of the competent authority. Secondly, the wording of the question could be interpreted as implying that the labour inspectorate could be required to have a role in monitoring training in educational institutions generally. The proposed new instrument should make it clear that such a provision in fact relates to training of employees to work in any categories of workplace that the inspectorate might be excluded from inspecting (as in the answer to Question 7).

NZCTU: There is some ambiguity in the Question. It could be interpreted, as concerning the issue of whether inspectorates should be involved in the development of measures to minimize risk in training regarding hazards in any form of work. Alternatively, it could be interpreted as concerning only training for the kind of hazardous occupations referred to on page 9 of the ILO report. The NZCTU believes that the instrument should provide for the involvement of the inspectorate in the formulation and monitoring of measures to minimize risk at work generally, not just during training. It makes a distinction between the development of standards, and the implementation of those standards within industries and individual enterprises. It does not believe that the development of standards is the sole preserve of employers. Developing minimum standards is an exercise in balancing interests, and most properly the role of Government, in consultation with representative employers' and workers' organizations. NZCTU believes that such an exercise can only result in effective standards when it also involves those who should apply and enforce those standards. It believes that employers, in cooperation with representative organizations of workers, have a crucial role to play in the application of those standards to the workplace. Such implementation should be monitored by inspectorates. Accordingly the inspectorates should have a role in formulating and monitoring effective measures generally.

*Philippines*. Yes, considering that inspectors are themselves experts.

*Portugal*. CIP. No opposition, although these functions should not be mandatory but optional.

*Suriname*. Yes. The inspectorate is the executing agency.

*Sweden*. In Sweden, labour inspection supervisory activities are required to aim primarily at inducing businesses and authorities to reduce substantially the number of work accidents and work-related diseases. Thus, the labour inspectorate is required to plan its work in such a way that workplaces with the highest number of injuries receive priority for supervision. This also applies in connection with training. Accordingly, there is no need for an activity to be especially highlighted in the manner proposed in Question 19.

*United Kingdom*. No, this is a matter for employers in normal consultation with the inspection bodies.

TUC: In the United Kingdom, trainees at work are protected by health and safety legislation. More emphasis needs to be given to the quality of training schemes and how they should positively involve health and safety aspects. Professional institutions which administer the training schemes are still sadly lacking in their understanding of the role that health and safety should play in the standard-setting process.

*Uruguay*. Yes, provided that the reference is to enterprises and not educational establishments.
* NCC: No.

Forty-four out of 57 governments, and also a large majority of employers' and workers' organizations, wished to see the labour inspectorate have a role in formulating and monitoring risks during training for potentially hazardous work. Some of the governments which gave negative replies were not in fact opposed to the principle, but rather felt that there was no need to highlight such activities, as they were part of the normal responsibilities of inspectors (Sweden), or else that they should be voluntary (Czech Republic). Another group of Members accepted that inspectorates should undertake the task of monitoring effective measures to minimize risks during training for potentially hazardous work of NCS sector employees, but should have no role in their formulation (Algeria and New Zealand, for instance). The United Kingdom felt that this was a matter for employers to decide in consultation with the inspection body.

The Office suggests incorporating the view of the large majority of constituents in the Proposed Protocol *(Article 6)*.

## V. Content of a Recommendation

*If, in reply to question 2, you stated that the instrument(s) should take the form of a Protocol supplemented by a Recommendation, please specify the matters you consider appropriate to the Recommendation.* **Qu. 20**

*Total number of replies: 8*. Austria, Belgium, Benin, Colombia, Cyprus, Italy, Norway, Seychelles.

*Austria*. The Recommendation should merely contain more details on those points requiring interpretation for more detailed information. This could, for instance, be the case concerning issues raised in Questions 12 to 19.

*Belgium*. The Recommendation could deal with the introduction of inspection methods of working conditions of workers who, under whatever modalities, would be excluded from the scope of Convention No. 81.

*Benin*. The Recommendation could contain provisions facilitating the application of the Protocol, or applicable by those not ratifying it.

*Colombia*. The Government is unaware of the political reasons or tactical circumstances for which the armed services and police should be excluded from the system of inspection; therefore it cannot make any kind of recommendation in this regard.

*Cyprus*. Inspection arrangements for categories of workplaces which are excluded from the provisions of the Convention; special arrangements for the inspection of workplaces in the armed services, the police and/or other public security services, fire brigades and other rescue services, and prisons; arrangements for collaboration between employers and workers in regard to safety and health and the establishment of safety committees within each undertaking; annual reports of inspections in the NCS sector.

*Italy*. The observations in the Government's replies should be taken into account.

*Norway*. This matter should be considered by the Conference in due course.

*Seychelles*. For categories exempted from labour inspection, national policy should allow other competent authorities access to such enterprises and be vested with certain powers within the Protocol and Recommendation.

*United States*. USCIB: Guidance for implementation with respect to the military, police and security, and fire and rescue services, and other areas where there could be difficulties of implementation that might vary according to national conditions.

The comments of the Office to this and the following Question have been combined and are reproduced after the summary of replies to Question 21.

**Qu. 21** *If you favoured a Recommendation only, please specify the matters you consider appropriate to it.*

*Total number of replies: 10*. Czech Republic, Ecuador, Indonesia, Republic of Korea, Latvia, Netherlands, Peru, Sudan, Turkey, Uruguay.

*Czech Republic*. If the Conference decided that the instrument should have the form of a Recommendation, then it should include specification of limitations of labour inspectors' authorities mentioned in Questions 12, paragraph 2; 13, paragraph 2; and 15, paragraph 2.

*Ecuador*. The Recommendation should provide for labour disputes settlement; inspectors would therefore have direct contact with the parties at the workplace and should settle differences through dialogue. This would require a larger number of inspectors than is now the case.

*Indonesia*. Because of national conditions, Indonesia has not yet been able to implement some provisions of Convention No. 81.

*Korea, Republic of*. The Government considers it appropriate for the standard to have general matters of principle prescribed with respect to the content of Convention No. 81. However, the scope of application to workplaces, the criteria of application and other particular provisions should be provided independently by each Member considering its own situation.

*Latvia*. Issues related to Questions 7 and 12 to 16.

*Netherlands*. Articles 3 to 21 of Convention No. 81.

*Peru*. It would be advisable for a Recommendation to provide for the minimum measures that would ensure the best application of this instrument.

*Sudan*. The Recommendation should ensure the provision of an inspection service in order to achieve its objectives. Inspectors should not necessarily be from outside the unit, and the inspection's objectives could also be achieved through committees. Labour inspectors' expertise could be used for guidance, their collaboration sought in training courses provided for special inspection teams, or as members of committees formed for this purpose.

*Turkey*. TISK: All issues raised in the answers to the Questionnaire.

*Uruguay*. The Recommendation should list the workplaces that could be excluded from its scope; and include those matters which the instrument dealt with in general.

CNC: Issues related to (a), (b), (g) to (j), (h), (l), (m) and (n) of Question 7, paragraph 2.

It will be recalled that a certain number of Members suggested the adoption of a Protocol supplemented by a Recommendation, and certain others favoured a Recommendation only. Several of these Members offered interesting arguments in favour of their proposals. Some suggested that a Recommendation was desirable to provide additional guidance or more details on matters of application of the standards. However, the majority view is clearly as stated in the Office comments to Question 2, namely that the new instrument should take the form of a Protocol only. It is felt that the Protocol as proposed would provide adequate guidance on relevant inspection arrangements and other issues raised. The Office, upon analysis of the arguments advanced, feels that there are insufficient grounds for a separate instrument, and that the concerns expressed can be fully accommodated in the text of the new Protocol. Therefore, no separate provision on this issue has been included in the Office text.

## VI. Special problems

*Are there any particularities of national law or practice which, in your view, are liable to create difficulties in the practical application of the international instrument(s) as conceived in this report?* **Qu. 22 (1)**

*Total number of replies: 47.*

*Affirmative: 11.* Angola, Australia, Austria, Colombia, Ethiopia, Nicaragua, Portugal, Spain, Tunisia, United States, Uruguay.

*Negative: 34.* Algeria, Benin, Brazil, Bulgaria, Canada, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Finland, Germany, Hungary, Indonesia, Ireland, Italy, Republic of Korea, Kuwait, Latvia, Lithuania, Republic of Moldova, Myanmar, Namibia, Netherlands, Philippines, Romania, Seychelles, Slovakia, Suriname, Switzerland, Syrian Arab Republic, Turkey, United Kingdom.

*Other: 2.* Lebanon, New Zealand.

*Algeria.* No difficulties are envisaged. However, the instrument(s) should provide for more flexibility, leaving room to Members to choose systems and mechanisms which give recognition to their constraints and realities.

*Australia.* ACCI and ACTU: No.

*Canada.* CEP: Canada has unique structural problems related to the division of powers between the federal and provincial levels of Government. However, these problems also exist for every other ILO instrument to which Canada has been a signatory.

*Cuba.* No, except in workplaces excluded under Question 7, paragraph 2.

*Germany.* DGB: Yes.

*Greece.* GCGW: Yes.

*Japan.* RENGO: Yes.

*Lebanon.* The reply to this question is linked to the content of the proposed instrument to be drafted on the basis of replies received from Members; secondly, the difficulties in the practical application of the proposed instrument(s) depend on the observations and suggestions included in it. The Government considers that the Office has a role to play in harmonizing different points of view when drafting the proposed text to be submitted to the Conference, and accordingly in overcoming some difficulties in the practical application, by providing for flexibility in its content and free choice in its scope.

*New Zealand.* Not relevant.

*Syrian Arab Republic.* CoI: Yes.

*Turkey.* TÜRK-IS and TISK: Yes.

*United Kingdom.* TUC: Yes.

**Qu. 22 (2)** *If so, please state the difficulties and indicate how you would suggest that they be met?*

*Total number of replies: 12.* Angola, Australia, Austria, Colombia, Ethiopia, Indonesia, Nicaragua, Portugal, Spain, Tunisia, United States, Uruguay.

*Angola.* The lack of qualified inspectors. The need to plan training activities.

*Australia.* For Australia the main obstacle to compliance would be that, in Queensland, Crown employees are excluded from labour inspection. However, representative unions are empowered under the Queensland Industrial Relations Act 1990 to enter workplaces and carry out inspection on behalf of their members. There is a system of labour inspection which applies to public sector workplaces in all other jurisdictions through the enforcement of legal provisions relating to awards, as well as internal grievance procedures which can usually be followed to resolve any complaint. There might be some need for flexibility to enable the competent authorities to determine what is practicable and consistent with national laws and regulations.

*Austria.* Distribution of constitutional competencies in the federal system could create difficulties in the application of the proposed instruments.

*Canada.* CEP: Canada should be committed to enacting complimentary legislation at the provincial level.

*Colombia.* Matters of national order and recent treaties which the country has ratified make it too difficult to include the armed services. The difficulties include military regulations, problems of public order, guerilla warfare, drug trafficking, etc. Such circumstances require an immediate response, and inspection would thus be a hindrance. Furthermore, labour inspection is still at an early stage in Colombia. The country lackes the economic and technical resources to provide full inspection coverage.

*Ethiopia.* Most of the categories of workplaces in the NCS sector are excluded from national labour law, in particular from the new Labour Proclamation. These difficulties would be met by drafting new labour laws, designing mechanisms of appropriate inspection, and organizing the inspectorate's capacity to fully reach out to this sector.

*Germany.* DGB: The NCS sector is largely excluded from German labour protection legislation. Therefore, almost insuperable difficulties would arise when undertaking to achieve the objectives of the proposed instrument(s). In the context of this report, the EU Directive 89/391/EEC has a central role to play, since it applies to all workers. The above-mentioned

difficulties could be overcome if the Directive were transposed into German law and the NCS sector included in all other German labour protection regulations.

*Greece*. GCGW: The discretion left to labour inspectors (Article 17, paragraph 2, of Convention No. 81), to give warning and advice instead of instituting or recommending proceedings, has and continues to have negative results in practice. Especially in workplaces of the NCS sector, where mainly civil servants inspect state services, this discretion tends to weaken the effectiveness of inspection and open the way to all forms of pressures on inspectors. For these reasons, Article 17, paragraph 2, of Convention No. 81 should be re-examined within the framework of this discussion and the results taken into consideration when drawing up the instrument(s).

*Indonesia*. The Government has taken measures to review and revise legislation in line with international labour standards.

*Japan*. RENGO: Application of this instrument requires revision of a number of laws in Japan, especially concerning public sector employees.

*Nicaragua*. Implementation would require an increase in inspection staff and qualifications, and logistic support to carry out the new functions would have to be strengthened. The Government is not in a position to accomplish this.

*Portugal*. In Portugal, direct state administration is hierarchically dependent on the Government, which exercises all management and inspection powers regarding the organization and functioning of services through special bodies, some of which are highly specialized. Given the characteristics of these institutions, it would not be appropriate to extend the activities of the labour inspection system to them, not only because it would be difficult to harmonize inspection by labour inspectors and hierarchical inspection, but because it would be more difficult to deal with the consequences of such twofold inspection. Regarding the security forces, mention should be made of the specific nature of their internal organization, the special form in which they act and, finally, the special nature of the institutional missions with which they are legally entrusted. This organizational specificity takes various forms: hierarchical chain of authority at all levels and in all posts, relationship of trust between the chief, director or head and his subordinate workers, autonomous disciplinary regime, and special statutes. The special form in which security services work is reflected in three essential aspects: the guarantee of the permanent availability of the service, technical autonomy in operational terms, and exercise of powers of authority and coercion which are appropriate to specific situations. These functions are directly related to the security of the State itself, its institutions and citizens, which are essential. The secret nature of much of the activities of the security institutions, as well as of their respective operational arrangements and equipment and other means, would not lend itself easily to interference by any bodies which are not part of the hierarchical structure.

*Spain*. The particularities of Spanish legislation relating to the authority of the labour and social security inspectorate in practice goes further than the provisions for the modification of Convention No. 81.

*Syrian Arab Republic*. CoI: The independence of different administrative services from each other and difficulties in coordination amongst them are likely to be obstacles in the practical application of the future instrument. It is suggested to organize the labour inspectorate under a higher authority, i.e. that of the Prime Minister.

*Tunisia*. To avoid numerous difficulties which the instrument might create in practice, the situation of labour inspection in developing countries, characterized by poor organizational resources and inability to cover the establishments already under its purview, should be taken in consideration during the elaboration and discussion of the Protocol.

*Turkey*. TÜRK-IS: Comprehensive amendments in all relevant legislation should be made to ensure compliance with such a Protocol to Convention No. 81.

TISK: Emergencies might occur, especially in the area of occupational safety and health, in educational, health and prison services. It is necessary that labour inspection, to be carried out in compliance with an international instrument, should not be such as to hinder services or bring

them to a stop. The choice of the workplaces in Article 7, paragraph 2, should be left to the competent national authorities.

*United Kingdom.* TUC: The Government has stated that it views health and safety legislation as a burden on employers. In the UK, a worksite is visited by HSE inspectors on average once every seven years. This is clearly not acceptable. The Government's record in ratifying ILO Conventions dealing with health and safety at work over the last ten years or so has been poor. Against this background, the TUC is sceptical about the seriousness of the Government's approach to protecting the health, safety and welfare of people at work.

*United States.* In order for OSHA, for example, to apply the international instrument(s) conceived in this questionnaire, a statutory change would be required. In 1991, legislation was introduced that would extend OSHA's jurisdiction to the non-commercial services sector, but it has not yet passed Congress.

*Uruguay.* The Constitution contains a series of specific provisions for civil servants, requiring for example, that their statute be established by legislation differing substantially from regulations for workers in the private sector, except when legal texts specifically include civil servants under general labour or social security provisions. The public service includes bodies responsible for supervising such areas as working hours, rest periods, disciplinary action, and general regulations pertaining to relations between civil servants and the administration. To implement inspections in the public sector would be tantamount to creating a double system, which would contradict the principles of administrative economy. Moreover, while there would then be a double system in public services, there would only be one for the private sector, already insufficient given current limitations.

Most Members did not consider that any particularities of national law or practice were liable to create difficulties in the practical application of the proposed international instrument. The main concerns of Members so considered were quite varied and did not readily lend themselves to any classification necessary to formulate a solution that would be generally applicable. Lack of resources to fully implement the Protocol was cited as a hindrance by several Members. Whilst this is certainly a serious problem, it has, to the extent that this is effectively possible, already been addressed in Article 7, paragraph 3, and Articles 10, 11 and 16 of Convention No. 81. The Office is not therefore putting forward any additional provisions on the issues raised in the Proposed Protocol and considers that they have been dealt with adequately in various ways in the comments on replies to previous questions.

**Qu. 23** *(Federal states only) Do you consider that, taking into account the provisions of Article 4, paragraph 1, of Convention No. 81, the proposed instrument(s) need to make any further provision in regard to the extension of application of the Convention in federal States? If so, please specify.*

*Total number of replies: 7.*

*Affirmative: 3.* Brazil, Sudan, United States.

*Negative: 4.* Australia, Canada, Germany, Switzerland.

*Australia.* No. Article 4 of Convention No. 81 already makes adequate provision for federal States.

*Austria.* BAK: It should be ensured that the instrument be extended to, and applied in the federal States and municipalities.
BMÖWV: No.

*Belgium.* CNT: No.

*Canada.* CEP: Yes. Members should be asked to make a commitment to enforcement at the appropriate level of government.
CLC: It should be ensured that the provinces have responsibility to enforce.
PSA: Placing labour inspections under the supervision and control of a central authority (Article 4, paragraph 1, of Convention No. 81) could be limited by more than just "administrative practices".

*Sudan.* Yes, prohibition of entry, or impracticability of allowing entry in certain cases; national legislation might not cover non-commercial workplaces; such establishments are normally concerned with providing means and measures consistent with the provisions of Convention No. 81, so as to avoid submission to external inspection.

*United States.* Since the US Government is comprised of many cabinet-level departments which include agencies with enforcement responsibilities for a wide variety of laws, as well as a number of independent agencies with such responsibilities, it would be impossible to have a central authority for labour inspection, as provided in Article 4, paragraph 1, of Convention No. 81. In addition, in the United States, each State is permitted to operate its own occupational safety and health plans, approved and monitored by the federal OSHA. States which operate these plans must cover the NCS sector. At present, there are 25 State plans in operation.

The difficulties mentioned by Sudan do not appear to be specific to a federal State, and those mentioned by the United States are addressed by Article 4, paragraph 2, of Convention No. 81.

*Are there, in your view, any other pertinent problems not covered by this questionnaire which ought to be taken into consideration in the drafting of the instrument(s)? If so, please specify.* **Qu. 24**

*Total number of replies: 41.*

*Affirmative: 6.* Colombia, Denmark, Germany, Sudan, Tunisia, United States.

*Negative: 34.* Australia, Benin, Bulgaria, Canada, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, Ethiopia, Finland, Hungary, Ireland, Republic of Korea, Kuwait, Latvia, Lithuania, Republic of Moldova, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Philippines, Portugal, Romania, Seychelles, Slovakia, Switzerland, Syrian Arab Republic, Turkey, United Arab Emirates, United Kingdom.

*Other: 1.* Brazil.

*Brazil.* The Government considers it advisable to undertake a study on a new Labour Inspection Convention.

CNI: No.

*Colombia*. There are countless problems not covered by this questionnaire: infrastructure, the level of each country as regards full compliance with Convention No. 81 (which would require additional duties and a larger number of competent authorities, without taking into account the geographical situation); the economic conditions of a developing country; and the lack of funds to carry out labour inspection efficiently. Nor is there any indication as to what type of collaboration governments would receive from the ILO to promote labour inspection. Such a proposal would not, therefore, lead to any solution; on the contrary, it would pose a severe hardship for certain developing countries in the light of labour's never-ending hope that lasting solutions will be found.

*Cyprus*. PEO: The instrument should contain a binding obligation on ratifying Members to run inspection services having appropriate remedial powers to ensure improvements in the NCS sector. Such remedial powers should also be backed up by legal proceedings.

*Denmark*. Work performed by pupils and students in connection with practical experiments in, for instance, chemistry and woodwork.

*Germany*. The inspection authority could issue notices to other state bodies, but could not enforce any measures ordered by way of sanctions.

DGB: After extension of Convention No. 81 to the NCS sector, the ILO should fundamentally review that instrument, dating from 1947, which, in essential parts, no longer does justice to the requirements of the modern industrial working environment. By way of example, the special problems in the field of biotechnology and genetic engineering should be mentioned, as well as the need to make available performance capacities in the inspectorate to solve new and complex problems in a qualified and multi-disciplinary fashion.

*Greece*. GCGW: Is the existing system of labour inspection sufficiently effective and impartial to cover the new sectors (which will be included in the instrument to be adopted), so that no confusion is created between persons who carry out inspections and services which are inspected (i.e. civil service inspectors and the public services inspected by them)?

*Sudan*. The extension of Convention No. 81 to activities in the NCS sector implies extension of the labour inspectorate's capabilities, which is difficult to achieve within a short period of time, because the training of specialized personnel and providing it with the necessary means requires a long period of time, as well as resources that may exceed developing countries' capacities. The extension of the scope of this Convention would require an effective contribution from the ILO in providing training for inspectors and support to inspection services.

*Tunisia*. Important issues have not been dealt with in this questionnaire, such as training for inspectors (given the complexity of inspection in the NCS sector) and control mechanisms of the inspectorate.

*United States*. Yes. The special problems of federal States should be taken into account, as well as the statutory limitations affecting some Members' occupational safety and health authorities.

USCIB: As has been well stated in the ILO report, no organization should be exempt from the requirements of labour inspection. Consideration should therefore be given to an accession clause permitting international governmental organizations to submit voluntarily to the requirements of the instrument(s) adopted.

The issue raised by Colombia, that the future instrument should take the economic conditions of developing countries into consideration, is an important one as it touches on the principle of the universal applicability of international labour standards. It should nevertheless be noted that Article 29, paragraph 1, of Convention No. 81 does deal with one particular aspect of this problem and seeks to provide a practical solution.

One Member felt that other important issues such as training of inspectors had not been dealt with. Again, this matter is addressed by Convention No. 81 in Article 7. Finally, some Members thought it advisable to undertake a study on a revision of Convention No. 81 or indeed on a new Labour Inspection Convention, but clearly the Office does not wish to comment on the merits of such a proposal in this report, as it would be a matter for the Governing Body or the Conference to decide under another procedure.

## PROPOSED TEXT

### Introduction

The purpose of the proposed Protocol is to extend the provisions of the Labour Inspection Convention, 1947 (No. 81), to workplaces in the non-commercial services sector. The means for effecting the extension is a proposed Protocol which would be open to ratification by any Member having ratified Convention No. 81. (The terms of the Convention remain unchanged.) A Member not having ratified Convention No. 81 would be able to ratify it with or without the proposed Protocol.

To afford further flexibility, a Member ratifying the Protocol would have the possibility to exclude, following consultations, specified categories of workers wholly or partly from its scope of application. In addition, a Member may make special arrangements for the inspection of workplaces in identified services of the non-commercial services sector, so as to limit the powers of labour inspectors in certain respects. These provisions have been proposed to take into account the special features of particular services within this sector.

Since the Governing Body fixed this item of the agenda for a single discussion, the Office has prepared a draft text of the proposed instrument, in accordance with Article 38, paragraph 2, of the Standing Orders of the International Labour Conference. In drafting the proposed Protocol, the Office has taken into account the needs for a systematic approach, clarity, consistency with the terms of the Convention and concordance between the English and French versions of the draft text.

Finally, it was thought necessary to afford members the possibility of denouncing the Protocol without having necessarily to denounce Convention No. 81 at the same time. Proposals to this end and other final provisions are contained in Part III of the Protocol. They conform with standard provisions in other ILO instruments.

### Proposed Protocol of 1995 to the Labour Inspection Convention, 1947

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Eighty-second Session on . . . June 1995, and

Noting that the provisions of the Labour Inspection Convention, 1947 (No. 81), apply only to industrial and commercial workplaces, and

Noting the relevance of the Occupational Safety and Health Convention, 1981 (No. 155), and

Having regard to the special risks to which workers in the non-commercial services sector may be exposed, and the need to ensure that they are subject to the same or an equally effective and impartial system of labour inspection, and

Having decided upon the adoption of certain proposals with regard to workers in the non-commercial services sector, which is the sixth item of the agenda of the Session, and

Having determined that these proposals shall take the form of a Protocol to the Labour Inspection Convention, 1947 (hereunder referred to as "the Convention");

adopts this ..... day of June of the year one thousand nine hundred and ninety-five the following Protocol, which may be cited as the Protocol of 1995 to the Labour Inspection Convention, 1947.

## PART I. SCOPE, DEFINITION AND APPLICATION

### *Article 1*

1. Each Member which ratifies this Protocol shall extend the application of the provisions of the Convention to activities in the non-commercial services sector.

2. The term "activities in the non-commercial services sector" shall refer to activities in all categories of workplaces that are not considered as industrial or commercial for the purposes of the Convention.

3. This Protocol shall apply to all workplaces that are not already included among industrial or commercial workplaces to which legal provisions relating to conditions of work and the protection of workers while engaged in their work apply that are enforceable by labour inspectors.

### *Article 2*

1. A Member which ratifies this Protocol may, by a declaration appended to its instrument of ratification, exclude wholly or partly from its scope the following categories:

*(a)* the armed services, whether military or civilian personnel, or both;

*(b)* the police and other public security services;

*(c)* prison services, whether prison staff or prisoners when performing work, or both,

if the application of the Convention to any of these categories would raise special problems of a substantial nature.

2. Before a Member avails itself of the possibility afforded in paragraph 1, it shall consult with the most representative organizations of employers and workers or, in the

absence of such organizations, the representatives of employers and workers concerned.

3. A Member which has made a declaration as referred to in paragraph 1 shall, following ratification of this Protocol, indicate in its next report on the application of the Convention under article 22 of the ILO Constitution the reasons for the exclusion and, to the extent possible, provide for alternative inspection arrangements for any categories of workplaces thus excluded. It shall describe in subsequent reports any measures it may have taken with a view to extending the provisions of the Protocol to them.

4. A Member which has made a declaration referred to in paragraph 1 may at any time modify or cancel that declaration by a subsequent declaration.

*Article 3*

1. The provisions of this Protocol shall be implemented by means of national laws or regulations, or by other means that are in accordance with national practice.

2. Measures taken to give effect to this Protocol shall be drawn up in consultation with the most representative organizations of employers and workers or, in the absence of such organizations, representatives of the employers and workers concerned.

## Part II. Special arrangements

*Article 4*

1. A Member may make special arrangements for the inspection of workplaces of national (federal) government administrative services, the armed services, of the police and other public security services and of the prison services, so as to limit the powers of labour inspectors as provided in Article 12 of the Convention in regard to:

*(a)* restriction of entry to inspectors having appropriate security clearance;

*(b)* inspection only by appointment;

*(c)* restriction on the requirement to produce documents;

*(d)* retention of confidential documents on the premises.

2. A Member may also make special arrangements for the inspection of workplaces of the armed services and of the police and of other public security services so as to permit any of the following limitations on the powers of labour inspectors:

*(a)* restriction on the taking and analysis of samples of materials and substances;

*(b)* prohibition of inspection during manoeuvres or exercises;

*(c)* prohibition of inspection of front-line or active service units;

*(d)* restriction or prohibition of inspection during declared periods of tension;

*(e)* limitations in respect of the transport of explosives and armaments.

3. A Member may also make special arrangements for the inspection of workplaces of prison services to permit restriction of inspection during declared periods of tension.

*Article 5*

A Member may make special arrangements for the inspection of workplaces of fire brigades and other rescue services to permit the restriction of inspection during the fighting of a fire or during rescue or other emergency operations. In such cases, the labour inspectorate shall review such operations periodically and after any significant incident.

*Article 6*

The labour inspectorate shall be able to participate in formulating and monitoring effective measures to minimize risks during training for potentially hazardous work.

PART III. FINAL PROVISIONS

*Article 7*

A Member may ratify this Protocol at the same time as, or at any time after its ratification of the Convention, by communicating its formal ratification of the Protocol to the Director-General of the International Labour Office for registration. Such ratification shall take effect 12 months after the date on which it has been registered by the Director-General. Thereafter the Convention shall be binding on the Member concerned with the addition of Articles 1 to 6 of this Protocol.

*Article 8*

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications of this Protocol communicated by the parties to the Convention.

2. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications registered in accordance with the provisions of Article 7.

*Article 9*

1. A Member which has ratified this Protocol may denounce it after the expiration of ten years from the date on which the Protocol comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified the Protocol and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Protocol at the expiration of each period of ten years under the terms provided for in this Article.

*Article 10*

The English and French versions of the text of this Protocol are equally authoritative.

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